

BOATYARD GENERAL PERMIT COMMENTS 8/2/2010

The following are the written and oral comments received to date.



P.O. Box 1160
East Helena, MT 59635 USA

Telephone 406-227-5302
Fax 406-227-8522

May 3, 2010

Gary Bailey
Department of Ecology
gary.bailey@ecy.wa.gov
PO Box 47600
Olympia, WA 98504-7600

Dear Mr Bailey,

American Chemet Corporation is a US based manufacturer of cuprous oxide used in marine antifouling coatings. Our products are registered by the US EPA, Canadian PMRA and countries throughout the world. Cuprous oxide has been found to be a safe and effective marine antifouling active ingredient. A clean vessel hull can reduce fuel usage by as much as 40% and is the primary deterrent to the transportation of invasive species on vessel hulls. Vessel hull invasive species transport has been found to be as common as that of ballast water transport. Therefore maintaining clean hulls through the best environmental and scientifically appropriate use of effective antifouling coatings is sound environmental policy.

Copper is also a necessary micronutrient for all life forms and is ubiquitous in our environment. Copper is a natural active ingredient in antifouling coatings. The environment and organisms have natural processes to render copper to a certain concentration non-bioavailable and therefore harmless. When copper concentrations exceed this point then regulatory action such as this draft permit should take effect.

Therefore we are submitting the following comments on the draft Boatyard General Permit Modification, April 21, 2010, as it pertains to the copper discharge limits.

There is no mention in the fact sheet or the draft permit of developing site-specific water quality criteria. However, the Clean Water Act does allow for site-specific water quality criteria to be developed through a Water Effects Ratio. In addition, in 2007 the US EPA incorporated the Biotic Ligand Model for freshwater into the Ambient Water Quality Criteria [AWQC] for copper and is pursuing to do so in marine water during 2010. When the marine BLM is adopted by the EPA it should be utilized by the state of Washington to establish new discharge limits for the boatyard permit for discharges into the marine

www.chemet.com

environment. This will ensure that the water quality criteria will be adjusted [raised or lowered] as appropriate to adequately protect marine life.

We suggest that wording be added to the fact sheet and draft permit allowing site-specific determinations of discharge limits of copper using either a WER or US EPA 2007 freshwater copper BLM, and the marine BLM once the EPA incorporates it into the implements it into the AQWC, and that the state of Washington will utilize the newest US EPA water quality criteria on a site-by-site basis to scientifically optimize the boatyard permits.

Below is specific wording we suggest including:

On page 10 of the draft permit define Site-specific water quality criteria as follows:

“Site-specific water quality criteria” means a scientifically based water quality criteria established for one particular water body or one area of a water body based on water sampling analysis and calculation methods as per Clean Water Act guidelines.”
[citation?]

On Page 40 of the draft permit under G5. General Permit Modification and Revocation, include the following:

E. When a site-specific water quality criterion is approved for the water body into which the permitted discharge is allowed.

On page 13 of the fact sheet modify and insert the following wording:

At the sentence

“Water-quality based limitations are based upon compliance with the Surface Water Quality Standards (Chapter 173-201A WAC), Ground Water Standards (Chapter 173-200 WAC), Sediment Quality Standards (Chapter 173-204 WAC) or the National Toxics Rule (40 CFR 131.36).”

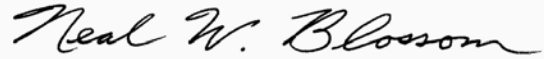
Modify it to read

“Water-quality based limitations are based upon compliance with the Surface Water Quality Standards (Chapter 173-201A WAC), Ground Water Standards (Chapter 173-200 WAC), Sediment Quality Standards (Chapter 173-204 WAC), the National Toxics Rule (40 CFR 131.36) or approved site-specific water quality criteria.”

These modifications to the permit and fact sheet will encourage the use of the latest science in protecting the environment while allowing stakeholders to benefit from the use of this science where appropriate. It would also dramatically simplify the implementation of site-specific water quality criteria and the modification of permits.

Thank you for the opportunity to comment on this permit. I would be happy to discuss this further should you desire.

Sincerely,

A handwritten signature in black ink that reads "Neal W. Blossom". The signature is written in a cursive style with a large, stylized 'N' and 'B'.

Neal Blossom
Director of Global Environmental Affairs
American Chemet Corporation
nblossom@chemet.com

www.chemet.com

CORPORATE AND SALES OFFICE: 740 WAUKEGAN ROAD, SUITE 202, DEERFIELD, IL 60015 U.S.A., 847-948-0800. FAX 847-948-0811
MANUFACTURING: SMELTER ROAD, P.O. BOX 1160, EAST HELENA, MT 59635 U.S.A., 406-227-5302. FAX 406-227-8522

Smith & Lowney, p.l.l.c.
2317 East John Street
Seattle, Washington 98112
(206) 860-2883, Fax (206) 860-4187

May 12, 2010

Via e-mail (gary.bailey@ecy.wa.gov)

Gary Bailey – Boatyard General Permit Comments
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Via e-mail (ksus461@ecy.wa.gov)

Kelly Suswind
Water Quality Program Manager
Department of Ecology

Re: Comments on Draft Boatyard General Permit

Dear Mr. Bailey and Mr. Suswind:

These comments on the draft Boatyard General Permit (“BGP”) are submitted on behalf of Puget Soundkeeper Alliance.

With this draft permit, Ecology performs contortions to avoid imposing the water quality protections of the Clean Water Act on boatyards, which discharge some of the highest recorded stormwater copper concentrations on record and have a generally poor history of permit compliance. Under this draft permit, boatyards would be allowed to discharge several times more toxic pollutants in stormwater than are other industrial facilities. Not only does this permit fail to satisfy rudimentary requirements and minimums for clarity, it would ignore the mandates issued by the Pollution Control Hearings Board in the appeal of the 2005 version of this permit. PSA is dismayed by this draft permit. PSA appealed the 2005 permit to the PCHB and won relief on several issues. Now, Ecology intends to ignore the PCHB’s order. Furthermore, following the PCHB proceedings, PSA entered into an unprecedented and constructive process with Ecology and the Northwest Marine Trade Association to evaluate technological potentials and work together on a next version of the BGP. A few months into this process, an agreement was reached on the key components including benchmarks that PSA and NMTA were willing to accept in compromise and that Ecology’s permit writer promised to include in the permit. Now, two years later, Ecology has scrapped that compromise. This seriously undercuts the public participation and permit appeal process and collaboration or compromise to resolve litigation with Ecology is not a good strategy for us. We urge Ecology to reconsider this draft permit and promptly issue or modify the BGP to comply with the law, including the orders of the PCHB. Without substantial changes, it is very likely that PSA will appeal this permit to the PCHB and/or take other legal action to ensure that Ecology is held accountable to follow the PCHB’s orders and

that Washington State has an NPDES permit program that lives up to the requirements of federal law. Indeed, PSA is now evaluating its potential claims under RCW 34.05.582 and RCW 34.05.570(4)(b) that may be brought in superior court against Ecology and Ecology Director Ted Sturdevant to enforce the requirements of the PCHB's order.

In addition to ignoring the PCHB's order, this draft fails to ensure that discharges do not cause or contribute to violations of water quality standards. The structure of this permit is fatally flawed – the benchmarks are impermissibly technology-based instead of water quality-based and the adaptive management responses essentially fail to require implementation of anything. This permit would violate the antibacksliding policy on several counts and does not require monitoring at a frequency indicated by discharge conditions, the potential for environmental harm, and the CWA. Ecology has entirely failed to perform any antidegradation analysis for this permit. Finally, the permit includes much inconsistent and unclear language, resulting in uncertainty as to the meaning of many of its conditions and leading to the impossibility of enforcement.

On January 26, 2007, the PCHB issued its Findings of Fact, Conclusions of Law, and Order in PCHB Nos. 05-150, 05-151, 06-034, & 06-040 (Consolidated)¹, the consolidated appeals of PSA and NMTA of the 2005 BGP. Excerpts of the PCHB's factual findings about BGP history provide useful background for PSA's comments and view:

... In the early 1990s, Ecology determined that boatyards were an "industry of concern." As a result, the agency decided boatyards should be regulated with a general permit that was specific to the boatyard industry; and the first BGP was issued in 1992, with an expiration date of November 1997. Also in 1992, Ecology began a series of non-regulatory technical assistance campaigns with various industrial sectors, called "single industry campaigns."

The 1992 BGP required a single stormwater discharge sample to be collected annually Although the stormwater data from the first BGP was of limited value, Ecology found that "it was easy to recognize that a problem existed with the quality of the runoff leaving the site ... [C]opper concentrations in the stormwater exceeded the surface water quality criterion by one to three orders of magnitude."

In 1997, Ecology selected boatyards and marinas for its first agency-wide, single-industry campaign. It did (sic) for a number of reasons, including the large number of boatyard facilities, the immediate impact their discharges have on the environment, significant multimedia aspects, and the fact that Ecology was preparing the renewal the BGP. Because of the permit renewal, the "Ship Shape" campaign had a significant compliance

¹ This and the other PCHB decisions referenced in these comments are appended to this letter and incorporated as part of these comments.

assistance component, including site-specific guidance on proper stormwater sampling techniques, the proper location to collect samples, and improving source reduction through more effective use of BMPs.

Boatyards have a history of an extremely high rate of noncompliance with the requirements of the past BGPs. One experienced Ecology permit manager estimated that as much as ninety-five per cent (95%) of the industry failed to comply with the BMP requirements of the earlier permit, with a resulting lack of compliance with water quality standards in discharges. Many boatyards failed to submit some or all of the discharge monitoring reports (DMRs) required by the 1997 BGP. As a more recent example, in February 2006, a large number of boatyards failed to file required stormwater discharge monitoring information. It has also been common for Ecology to take no action when the DMRs that are submitted indicate noncompliance with permit conditions.

....

... The verified data from the 1997 permit demonstrated to some Ecology staff that boatyard discharges of copper, lead, and zinc, (sic) violated water quality standards. In December of 2003, Ecology notified the regulated boatyard community of their copper monitoring results. One purpose of this effort was to educate the boatyards about how to conduct proper copper monitoring and report, and to explain the harmful effects of copper discharges on fish. Another purpose of the effort was to inform boatyards of how much reduction or dilution of copper would be needed for them to meet a permit limit based upon the state water quality standards for copper. For most boatyards, their copper results indicated that in order to meet the copper standard, their copper discharge levels must be reduced by many – and in some cases by thousands – of times.

Copper concentrations in stormwater discharging from boatyards frequently greatly exceed Washington surface water quality standards. The responsiveness summary for the 1997 BGP noted that “it was easy to recognize that a problem existed with the quality of the runoff leaving the site ... copper concentrations in the storm water exceeded the surface water quality criterion by one to three orders of magnitude. Ecology’s 1999 “Ship Shape Industry Campaign Summary Report” noted the concerns about the quality of stormwater leaving boatyard facilities, and the fact that copper concentrations in stormwater remained high, and likely harmful to aquatic life, particularly salmon. ... Stormwater runoff samples from boatyard facilities taken from marine waters in both spring and fall flush events also showed copper concentrations greatly in excess of the state water quality criteria of 4.8 ug/L (dissolved). The author of the 2005 BGP [Gary Bailey] acknowledges that some boatyards violate the numeric water quality criteria with their stormwater discharges, particularly the copper criteria.

Puget Soundkeeper Alliance v. Ecology, PCHB Nos. 05-150, 05-151, 06-034, & 06-040 (Consolidated) Jan. 26, 2007 at 14 – 14 (citations omitted).

The PCHB also highlighted its particular concerns about boatyard stormwater discharges on salmonids:

Numerous salmon and steelhead populations in the Pacific Northwest have been listed for protection under the Endangered Species Act. The National Marine Fisheries Service (NMFS) has recognized the deleterious effects of copper upon fish populations. Addressing untreated stormwater and other sources of pollution is listed among the top ten actions needed for salmon in the Draft Puget Sound Salmon Recovery Plan. Many Western Washington boatyards discharge effluent to Central Puget Sound and Lake Union, which are critical habitat for threatened Puget Sound Chinook.

Boatyard stormwater discharges contain various components that are harmful to aquatic life, and those components appear in levels that are high enough to have the potential to negatively impact salmon and water quality. The anti-fouling paints used to coat the hulls of vessels are designed to keep organisms from colonizing on the boat bottom by releasing toxic metals such as copper, in and lead-based compounds, which are known to have lethal and sub-lethal effects on salmonid species. Monitoring results of stormwater discharges from boatyards depict enormous amounts of copper in the effluent, levels that are more than what is found in highway discharges, discharges from other industrial users, and urban runoff.

Dissolved copper in waters, including stormwater, has both lethal and sub-lethal effects on several species of fish at very low concentrations. Copper particularly impacts salmon recovery, due to the established detrimental effects of that metal on salmonid species. In the 500 to 10,000 ug/L range, copper has also been shown to kill half of the rainbow trout exposed in less than a day, often in just a few hours. Sub-lethal effects of copper exposure to fish include respiratory distress, reduction or elimination of olfactory function, and disruption of osmoregulation (the ability to balance salt and water in living cells as fish go from fresh to salt water). Copper pollution in water also causes behavioral effects in salmon, including compromise of predator avoidance skills, disorientation as to swim direction during migration, and changes in body orientation within the waterbody. These sub-lethal effects lead to diminished functionality of salmon, which can render the fish unable to reproduce, thereby reducing population strength. Diminished functionality can also lead to early death.

Copper levels of 5 ug/L have been shown in scientific studies to be the sub-lethal end point to protect the life processes of salmon. In one study, downstream migration of yearling coho was impaired by exposure to dissolved copper concentration at or above 5 ug/L. Exposure to dissolved copper concentrations of 10 ug/L has been shown to reduce yearling coho feeding, growth, and ability to survive moving into seawater. Juvenile Chinook salmon exposed to 44 ug/L of dissolved copper quickly lost the ability smell and avoid further copper exposure.

Copper's toxicity to the salmonids manifests on a time scale of minutes. Salmon have been shown to suffer olfactory impairment in less than ten minutes at copper concentrations as low as 2 to 20 ug/L. Fingerling rainbow trout exposed to dissolved copper concentrations of 10 ug/L for 24 hours showed greatly increased death from a common viral disease. In the Seattle area, the stormwater exposure of migrating salmon is typically about 21 hours.

Id. at 21 – 23 (citations omitted).

Requirements of the PCHB order

The PCHB vacated Ecology's decision approving the 2005 BGP and remanded the permit to Ecology to make specified changes consistent with its opinion. *Id.* at 64. The draft permit fails to satisfy this order in several ways.

Nothing in the settlement agreement between PSA, NMTA, and Ecology, signed in June and July 2007 (attached as Exhibit 2 to these comments), relieves Ecology of its obligation to implement the PCHB's order. In fact, this settlement agreement, at sections IV.1. and 2., implicitly contemplates that Ecology will modify the BGP in accordance with the PCHB's order. Section IV.1. set a deadline for modification of the 2005 ISGP to satisfy specified items in the PCHB's order, and, by June 2008, Ecology was to issue a draft modification that addressed the remaining items in the PCHB's order.

The PCHB found that the copper benchmarks are the numeric portion of narrative water quality-based effluent limitations. *Id.* at 24. With respect to the copper benchmarks, the PCHB ordered that:

Ecology shall recalculate and lower the benchmarks for copper in the 2005 BGP. In doing so, Ecology shall use a more realistic and conservative (higher) translator value that does not rely exclusively on shipyard data, but also considers the available scientific data identifying an average of 50% dissolved copper in urban stormwater and the default values in the Permit Writer's Manual. In recalculating and lowering the copper benchmarks, Ecology shall not include a dilution factor, and shall specifically consider the lethal and sub-lethal effects on salmonid species that boatyard discharges in excess of the benchmarks will have in waters

where salmonids are present for part of the year and in waters listed as impaired for copper.

Id. at 64 – 65.

Instead of lower, water quality-based copper benchmarks, the draft permit includes benchmarks that Ecology purports to be technology-based, and that were derived without any apparent consideration of effects on salmonids.

The PCHB ordered Ecology to “establish separate benchmarks and monitoring requirements for lead and zinc that do not rely exclusively on copper as an indicator for these metals.” *Id.* at 65. Contrary to this order, the draft permit includes no lead benchmarks.

The PCHB ordered Ecology to modify the BGP “to explicitly require *implementation* of remedial actions that are dictated at all three levels of the adaptive management approach. It shall also explicitly require that permittees must continue implementing required remedial actions unless and until the benchmarks and other limits are achieved.” *Id.* at 65 – 66. In the draft permit, Ecology has failed to satisfy these and related requirements – the level responses continue to essentially require nothing not otherwise required by other provisions of the BGP.

With respect to Level Two Responses, the PCHB directed Ecology to clarify when a Level Two Response must begin, and to “establish or require an implementation schedule for prioritized treatment practices or structures outlined in a Level 2 Source Control Report.” *Id.* at 66. In the draft permit, Ecology has failed to satisfy these and related requirements.

With respect to Level Three Responses, the PCHB ordered Ecology to modify the permit to say when Ecology will make a determination about an engineering report and to clarify what happens when Ecology does not approve one. *Id.* at 66 – 67. In the draft permit, Ecology has failed to satisfy these and related requirements.

As the PCHB found was the case with the 2005 BGP, for this draft permit, there is no requirement that permittees actually achieve the benchmark levels through implementation of enhanced BMPs. *Id.* at 61. Again, “[t]he result is that there can be ongoing excursions of the benchmark values in the Permit without corrective action by the permittee or enforcement by Ecology.” *Id.*

Antidegradation

Ecology has failed to comply with the requirements of the antidegradation policy with regard to the draft permit. Ecology has not done the analysis, developed the adaptive process, or provided the public notice mandated by WAC 173-201A-320, Tier II antidegradation protection. The fact sheet for the BGP does not even mention antidegradation.

Tier II applies whenever a water quality constituent is of a higher quality than a designated water quality criteria (i.e., whenever a waterbody is not on the 303(d) list) and a new or expanded action conducted under an NPDES permit is expected to cause a measurable change in the quality of the water. WAC 173-201A-320(1). New or reissued general permits must undergo an analysis under Tier II when Ecology develops and approves the general permit. WAC 173-201A-320(6).

Tier II analysis requires a determination of whether the discharge to be authorized has the potential to cause a measurable change in the physical, chemical, or biological quality of the receiving waters. WAC 173-201A-320(3). If this determination is affirmative, “then an analysis must be conducted to determine if the lowering of water quality is necessary and in the overriding public interest.” WAC 173-201A-320(4). “Information to conduct the analysis must be provided ... by [Ecology] in developing a general permit ...” and must include specified information about social, economic, and environmental costs, as well as “site, structural, and managerial approaches” to prevent or minimize the lowering of water quality. *Id.*

These requirements apply to general permits. As Ecology explained in a January 19, 2006, letter to EPA²,

During the development or re-issuance of a general permit, Ecology will assess the anticipated level of degradation due to new or expanded discharges that are likely to be authorized by the general permit, and that level of degradation will be taken into account during the antidegradation review of the general permit. The permit or fact sheet will contain a determination whether or not the lowering of water quality from the anticipated discharges is necessary and in the overriding public interest.

Nowhere in the Fact Sheet or other materials available with the draft permit is there any discussion of the anticipated level of degradation due to new or expanded discharges likely to be authorized by the general permit or of whether the lowering of water quality is necessary and in the overriding public interest. Has Ecology made the assessments and determinations required by WAC 173-201A-320(4)? Where are these discussed?

Furthermore, to allow meaningful public participation in the Tier II antidegradation analysis, Ecology explained that it would provide information about all permittees in the public notice process for general permits:

² January 19, 2006, letter from David C. Peeler, Ecology Water Quality Program Manager, to Michael Gearheard, U.S. EPA Region 10. EPA explicitly relied on Ecology’s representations made in this letter in its approval of Washington’s 2003 amendments to the antidegradation provisions of the water quality standards. May 2, 2007, letter from Michael F. Gearheard to David C. Peeler.

A list of the facilities applying for coverage along with a list of the potentially effected (sic) water bodies will be public noticed each time a permit is reissued and each time that a facility applies for coverage under a general permit. The public notice will occur in both a local paper and on Ecology's webpage. The notice will identify the facilities requesting coverage, the receiving water bodies they may affect, and the fact that general permit conditions were established with the expectation that the facilities covered will meet water quality standards; including the antidegradation requirements. A contact name for obtaining more information on the antidegradation review will also be included.

Jan. 16, 2006, Ecology letter to EPA. EPA specifically relied on these representations in its determination approving the changes to the antidegradation regulation as a means to allow antidegradation review on the general permit level, rather than permittee-by-permittee. May 2, 2007, EPA letter to Ecology.

It appears that Ecology has not followed these procedures for the draft permit. Has Ecology public noticed on its website and in appropriate local papers the list of facilities applying for coverage and the receiving waters that they may affect? Has Ecology provided a contact name for providing more information on the antidegradation review?

Finally, where "information regarding the existence, effectiveness, or costs of control practices for reducing pollution and meeting the water quality standards may be incomplete" because a water quality control program and associated control technologies are "in a continual state of improvement and development," Ecology may satisfy the requirements of Tier II for a general permit by adopting "a formal process to select, develop, adopt, and refine control practices for protecting water quality and meeting the intent" of the antidegradation policy. WAC 173-201A-320(6)(c).

This adaptive process must:

- (i) Ensure that information is developed and used expeditiously to revise permit or program requirements;
- (ii) Review and refine management and control programs in cycles not to exceed five years or the period of permit reissuance; and
- (iii) Include a plan that describes how information will be obtained and used to ensure full compliance with [the antidegradation policy]. The plan must be developed and documented in advance of permit or program approval under [WAC 173-201A-320].

WAC 173-201A-320(6)(c).

In other words, this adaptive process is one that Ecology must follow to develop and use information about the efficacy of its regulation and the available technology to review and refine general permit requirements and/or other programs in conjunction with the five-year permit cycle, and there must be a documented plan about how this is to be done before the general permit can be issued.

While information about the best control practices for reducing pollution from boatyard discharges is incomplete, particularly with respect to stormwater discharges, Ecology has no documented plan to comply with these requirements. How has Ecology complied with the requirements of WAC 173-201A-320(6)(c)?

Condition S1.

The requirements of S1.C. concerning modification of permit coverage are unclear and confusing. Must Ecology approve requests for modification of permit coverage before they become effective, or do such modifications become effective automatically? Based on the language of 40 C.F.R. § 122.62, PSA believes that Ecology must make a determination and take affirmative action before a requested modification can become effective.

S1.C.3. implies that some permittees are not required to have a SWPPP (“If required to have a [SWPPP] ...”). In what circumstances and under what permit condition is a permittee not required to have a SWPPP? If there is no such circumstance, this language should be deleted.

Condition S2.

To ensure that discharges do not cause or contribute to violations of receiving water quality, all stormwater discharges should be subject to numeric water quality-based effluent limitations (“WQBELs”). There is no doubt that boatyard stormwater has a reasonable potential to cause or contribute to violations of water quality standards, particularly for copper, and 40 C.F.R. § 122.44(d)(1)(i) and (iii) requires the inclusion of WQBELs in such circumstances. These WQBELs must be numeric unless numeric limitations would be infeasible. There is no reason that numeric WQBELs, at least for copper, zinc, and lead, are infeasible. Indeed, the draft permit includes numeric WQBELs for copper, zinc, and lead (albeit ones established with impermissible consideration of dilution factors as discussed below) in Condition S8. for facilities receiving a hardship certification. Why is it feasible to establish these numeric WQBELs for hardship certifiers but not for other permittees?

Condition S2.D.2. addresses stormwater discharges to Lake Union and the Ship Canal. It covers both existing and new discharges and permittees, replacing Conditions S2.C.2. and 3. of the current permit. S2.C.2. of the current permit includes a numeric WQBEL for copper for new sources and new discharges, while the new S2.D.2. includes no such limitation. The removal of this effluent limitation constitutes backsliding in

violation of Section 402(o) of the CWA. How is the removal of this effluent limitation consistent with the antibacksliding prohibition?

S2.D.2. also includes a total lead numeric WQBEL at 185 ug/L, which is more than three times the level of the lead WQBEL in the current permit. This constitutes impermissible backsliding in violation of Section 402(o) of the CWA. How is the proposed effluent limitation consistent with the antibacksliding prohibition? The fact sheet addresses the proposed lead effluent limitation at page 21, but does not explain the sources of the numbers used in the formula to derive the 185 ug/L limitation. Where do these numbers come from? How is the derivation of the 185 ug/L limitation consistent with WAC 173-201A?

Condition S2.D.3., establishing benchmarks for stormwater discharges to fresh and marine waters, is rife with problems. First, the paragraph of text above the table (“These technology-based benchmarks are calculated”) is unnecessary and misplaced in the permit. Language describing the derivation of permit conditions and Ecology’s authority to change conditions is appropriate in a fact sheet, but does not belong in the permit. This language has no regulatory value and its placement here instead of in the fact sheet only lack of clarity in this work and the potential for confusion about actual permit requirements. PSA suggests that this language be removed from the permit and that the first line of S2.D.3. be changed to be consistent with that in S2.D.2. and 4.: “Facilities discharging stormwater to fresh and marine waters are subject to the following benchmarks:”

Second, the purpose and function of the “seasonal average benchmark” is entirely unclear. This term is defined on page 9 as “the average of values reported on the monthly discharge monitoring reports from the period of October through May of each year.” The phrase “of each year” is potentially confusing as the period of October through May spans the new year and two calendar years, and is unnecessary. It should be deleted. More importantly, what does an exceedence of the seasonal average benchmark trigger? S7., which addresses responses to monitoring that exceeds benchmarks, the triggers for Levels 1, 2, and 3 are all written in the context of “sampling results that exceed a benchmark value,” or equivalent language. The language of S7.A.1., 2., and 3., even with its inconsistencies and imprecision, might work for exceedences of “maximum daily benchmarks,” but the integration of the seasonal average benchmarks into the draft permit is missing.

Third, the copper benchmarks in S2.D.3. violate the order of the PCHB. The PCHB ordered Ecology to “recalculate and lower the benchmarks for copper” and to consider the effects of copper discharges on salmonids in doing so. The copper benchmarks in the current permit are 38 ug/L for discharges to lakes, 384 ug/L for rivers, and 229 ug/L for marine waters. The draft permit proposes a 147 ug/L copper benchmark for all of these, which violates the PCHB’s order to lower benchmarks with respect to discharges to lakes. Furthermore, the draft permit’s benchmarks were derived with no consideration of the effects on salmonids. The PCHB expressed its frustration with Ecology in the appeal of the current boatyard permit for ignoring the PCHB’s earlier

determination that the ISGP's "benchmark for copper of 63µg/L [is] inadequate for discharges into waters where stormwater is identified as a limiting factor for salmon recovery." *Puget Soundkeeper Alliance v. Ecology*, PCHB Nos. 05-150, 05-151, 06-034, & 06-040 (Consolidated), pp. 29-30 (Jan. 26, 2007).

Fourth, these proposed copper benchmarks represent backsliding in violation of Section 402(o) of the CWA with respect to discharges to lakes.

Fifth, these copper benchmarks are inadequate to ensure that discharges do not cause or contribute to violations of water quality standards. This is evident through comparison of the numeric WQBELs set at S8.A. as 26 ug/L and 14 ug/L for freshwater and marine water respectively with the 147 ug/L copper benchmark. Furthermore, the recently issued Industrial Stormwater General Permit includes a 14 ug/L water quality-based benchmark for western Washington. Boatyards are more likely to have consistent, elevated copper levels and outfalls flowing directly and undiluted into waters where salmonids are likely to be present than are ISGP permittees. ISGP permittees are more likely to be discharging to municipal storm sewer systems and at a distance from sensitive receiving waters. Why would Ecology put less stringent benchmarks in the BGP than in the ISGP? Discharges at levels of up to 147 ug/L copper are likely to cause or contribute to violations of copper water quality criteria and beneficial use of receiving water by salmonids. How does the 147 ug/L copper benchmark ensure that discharges do not cause or contribute to violations of water quality standards? How does Ecology justify a BGP copper benchmark that is more than an order of magnitude higher than that in the ISGP?

Sixth, the PCHB specifically ordered Ecology to establish separate benchmarks and monitoring requirements for lead. S2.D.3. omits any benchmark for lead in violation of this order. While the draft permit requires sampling for lead, it omits a benchmark because "[l]ead is typically at or below measureable concentration in treated effluent" Fact Sheet at 18. This reasoning appears to fail as most stormwater discharges to which these benchmarks apply are not treated at all. Furthermore, why not establish a benchmark to go along with the monitoring requirement to require permittees to fix problems when lead levels are high? For permittees with low lead levels, the inclusion of a benchmark in the permit imposes no burden since there is already a monitoring requirement and nothing additional is required when a benchmark is met.

Seventh, the omission of oil and grease and total suspended solids benchmarks and associated monitoring for all boatyard stormwater represents impermissible backsliding in violation of the CWA. How is the omission of these requirements consistent with the prohibition of the antibacksliding provisions? Sampling results demonstrate that boatyards can be significant sources of these contaminants. For example, the CSR Marine facility on Commodore Way in Seattle (NPDES Permit No. WAG03-0100) has consistently exceeded the benchmark for total suspended solids—discharging as much as seven times the current benchmark for this parameter—and has triggered the requirements of a "Level Three Response" for this parameter. Although the facility has failed to undertake any of the requirements of a Level Three Response

(including the requirement to implement treatment measures), Ecology has not taken any enforcement action and instead is now proposing to remove this parameter from the permittee's sampling requirements. This violates the antibacksliding prohibition.

Condition S2.D.5. addresses stormwater discharges to 303(d)-listed waters. The table indicates that the numeric WQBELs for these discharges will be calculated with consideration of "existing dilution allowance." In what instances is there an "existing dilution allowance" for discharges to 303(d) listed waters? How is it possible to have a dilution factor for discharges to receiving waters that are already not meeting water quality standards?

Neither in the fact sheet, on the BGP page of Ecology's website, nor elsewhere can we find a list of the permittees discharging to 303(d)-listed waters and subject to the S2.D.5. limitations. Which permittees are subject to S2.D.5. and what are the specific limitations applied to them? By not providing this information during the public comment period, Ecology has failed to satisfy the applicable public notice requirements. Furthermore, deferring determinations of these effluent limits until after the BGP is issued will result in permit modifications that require public process.

Condition S3

Condition S3.a. concerns the use of vacuum sanders and includes an impermissible scheme for approval of waivers. Essentially, this condition requires the use of vacuum sanders unless Ecology provides otherwise in writing. The PCHB has previously ruled that provisions of this nature are illegal because they allow de facto modification of permit conditions without public process. *Puget Soundkeeper Alliance v. Ecology*, PCHB Nos. 02-162 through 02-164 (Consolidated), Order Granting Partial Summary Judgment, June 6, 2003.

PSA recognizes that the PCHB issued an order to Ecology concerning the prohibition on non-vacuum grinders in its 2007 decision in the BGP case. This provision required the permit condition to "be modified to allow an exception to the prohibition on non-vacuum grinders under those limited circumstances where it is impracticable to use a vacuum grinder and a permittee employs an alternative determined by Ecology to be demonstrably equivalent." *Puget Soundkeeper Alliance v. Ecology*, Jan. 26, 2007. To comply with this order, Ecology need not violate the PCHB's previous order as it now proposes to do. To satisfy the requirements of both orders, PSA suggests that the condition be written to allow the use of non-vacuum grinders in limited circumstances that are specified in the permit and when a permittee employs an alternative defined in the permit, which Ecology has already determined is demonstrably equivalent to the use of a vacuum grinder. If a new alternative is proposed during the life of the permit, the permit can be modified to provide for its use. This way, the condition would allow the use of an alternative in limited circumstances, as well as an opportunity for public review on those circumstances, which would satisfy the requirements of both orders. As written, there is no mechanism for public participation or challenge of any decision Ecology

makes to relieve permittees of the requirement to use vacuum grinders. This is not acceptable for the reasons set forth by the PCHB in the June 6, 2003, order.

Condition S4.

PSA strongly objects to Ecology's proposal to grant standard mixing zones to all permittees in S4.c. This is patently illegal, as the PCHB has emphatically explained. S4. should specify that compliance with the prohibition on discharges that cause or contribute to violations of water quality standards is determined at the point of discharge to receiving waters, and S4. must be deleted.

In *Puget Soundkeeper Alliance v. Ecology*, June 6, 2003, the PCHB examined provisions of the 2002 ISGP that provided for granting of standard size mixing zones to permittees upon their self-certification of satisfaction of certain regulatory requirements. After noting the dangers of widespread and indiscriminate use of mixing zones, the PCHB rejected the ISGP provisions because the mixing zones were going to be granted without Ecology's making of the determinations required by Washington's mixing zone regulations. These determinations must be made and the standards satisfied before mixing zones can be granted to protect against their overuse.

What Ecology now proposes to do in the BGP would be a more serious violation of the water quality standards and would constitute grounds for the withdrawal of EPA's NPDES permit program delegation to the State of Washington. WAC 173-201A-400 requires that AKART be fully implemented and that Ecology make determinations about potential for loss of sensitive or important habitat, interference with characteristic uses, and damage to the ecosystem before a mixing zone can be granted. As the PCHB explained on June 6, 2003, mixing zone determinations must be made on a case-by-case basis. The proposed S4.c. mixing zones satisfy none of the WAC 173-201A-400 requirements. Why is Ecology proposing this provision after the PCHB's decision on the 2002 ISGP? The PCHB has already expressed its frustration with Ecology for ignoring that decision when it set the copper benchmark in the current boatyard permit. *Puget Soundkeeper Alliance v. Ecology*, PCHB Nos. 05-150, 05-151, 06-034, & 06-040 (Consolidated), pp. 30, 49-50 (Jan. 26, 2007). Does Ecology maintain a file of the PCHB's decisions? How does Ecology make its permit writers aware of the content of PCHB's decisions on fundamental issues concerning general permits? What instructions does Ecology give them with respect to these decisions? How is S4.c. consistent with the requirements of WAC 173-201A-400 as interpreted by the PCHB?

Condition S5.

S5.3. includes inconsistent terminology, referring to "water line flushing" in the first line and "water line flushing wastewater" in the second. Are these two things the same? If so, PSA suggests inserting "wastewater" after "flushing" in the first line for clarity. If not, what is the difference and what does this provision mean?

Condition S6.

S6.B. fails to specify whether all points of discharge must be sampled and, if not, how points of discharge to be sampled are to be selected. As provided in the ISGP and EPA's MSGP, all points of discharge should be sampled unless two or more discharge points are substantially identical. Whether two or more discharge points are substantially identical should be determined by request to Ecology following a collection of enough sampling data from all points to determine identity in a statistically sound manner. This determination reducing the number of sample locations should be the subject of a modification of permit coverage to allow public participation.

The selection of points of discharge for sampling, and the omission of some of these, is important to ensure that this permit can work to protect water quality and ensure implementation of AKART. There is a great incentive to permittees to select discharge points likely to be relatively clean to avoid having to sample at discharge points likely to exceed benchmarks or effluent limitations. This is not an acceptable situation and safeguards must be built into the permit to preclude gamesmanship of this sort.

What points of discharge must be sampled, and who makes the determination as to those and on what basis? Why doesn't the permit require sampling of all points of discharge unless discharge points are substantially identical?

With respect to the stormwater sampling schedule set in S6.B., the requirement to sample only in the months of October, November, January, April, and May is inadequate. Why is no sampling required during the summer months when boatyards are the most active and when the first flush effect is most prominent due to the sometimes extended periods between rainfalls? Isn't it appropriate to require collection of at least a seasonal first flush event as the ISGP requires and as the PCHB ordered in *PSA v. Ecology*, PCHB Nos. 02-163 and 02-164 (Aug. 4, 2003)? Given the elevated levels of copper typically found in boatyard discharges, isn't it appropriate to require more sampling? The boatyard permittees in general have an extremely poor rate of compliance with the stormwater sampling requirements of the current permit. Why isn't sampling required on a monthly basis? Wouldn't more sampling provide more feedback and more incentive to permittees to more diligently implement BMPs?

What are the criteria for stormwater sampling? How does this permit prevent a permittee from collecting a sample after a week of nearly continuous rainfall in hopes of getting the cleanest possible sample instead of one that is representative or that shows critical conditions? Why doesn't the permit require stormwater sampling to be from the first half hour or hour of discharge following a dry period of a specified length?

Between the inadequate sample frequency and the lack of sample event criteria, the sampling requirements fail to ensure that representative samples will be collected. Does Ecology think that the permit requires collection of representative samples? If so, why? These shortfalls also leave the permit's monitoring requirements inadequate in most cases to determine whether a permittee is failing to satisfy permit prohibitions on discharges that contribute to violations of water quality standards as required by Sec.

308(a) of the CWA. Does Ecology think that the permit requires monitoring that is adequate to determine whether a permittee is complying with these permit prohibitions? If so, why?

What is the purpose of the BOD, NO₃+NO₂-N, and fecal coliform stormwater sampling? Why is this sampling required in 2012 instead of in the first twelve months after permit issuance?

Sampling of non-stormwater miscellaneous discharges should be required in the first twelve months of the permit term. Leaving the timing of this sampling unspecified allows it to be postponed until the end of the permit term, instead of conducted at the beginning when it would be useful to determine compliance with S5. at the outset of the permit term. Why doesn't the permit specify when this sampling is to be conducted? Where is the sampling of non-stormwater miscellaneous discharges to be conducted?

Condition S7.

Ecology proposes to issue a BGP that fails to satisfy the requirements of the PCHB's order with respect to adaptive management. In its order, the PCHB criticized the 2005 BGPs adaptive management scheme as an impermissible self-regulatory scheme that essentially ensured nothing. *PSA v. Ecology*, Jan. 26, 2007, 60 – 63. The PCHB issued specific instructions to Ecology:

The Permit shall be modified to explicitly require *implementation* of remedial actions that are dictated at all three levels of the adaptive management approach. It shall also explicitly require that permittees must continue implementing required remedial actions unless and until the benchmarks and other limits are achieved. To that end, the Permit must address the contingency that implementation of all BMPs and remedial actions required in the 2005 BGP might fail to achieve the applicable benchmarks. Such provisions shall include a reasonable time frame within which Ecology will respond to such situations and specify that Ecology will require the addition of individual, site-specific conditions under the general permit (such as additional BMPs, monitoring, monitoring triggers, numeric effluent limitations and/or compliance schedules) and/or that the boatyard facility obtain an individual NPDES permit.

Id., 65 – 66.

Where and how does the draft permit explicitly require implementation of remedial actions that are dictated at Level 1, Level 2, and Level 3? Condition S9.A.2. includes a reference to implementation of BMPs necessary as the result of benchmark exceedences, but then states that it does not apply to a Level 2 or 3 response. This is confusing at best and certainly not the explicit requirement envisioned by the PCHB.

Where and how does the draft permit explicitly require that permittees continue implementing required remedial actions unless and until benchmarks and other limits are achieved? Where and how does the draft permit address the contingency that implementation of all BMPs and remedial actions required might fail to achieve the applicable benchmarks?

Levels 1, 2, and 3 require little if anything more than what is required elsewhere in the permit. S9.A.2. arguably, though unclearly, requires the implementation of enhanced or additional BMPs when benchmarks are exceeded. In conjunction with S6.B., it also requires visual monitoring on a weekly basis and the correction of SWPPP and BMP inadequacies depending on results. What exactly do Levels 1, 2, and 3 require a permittee to do to actually control discharge quality that is above and beyond what is required elsewhere in the permit?

S7.A.3.d. provides for hardship certification based on a permittee's self-certification that it is "currently unable to fund the equipment necessary to meet the technology-based benchmarks." As written, this provision allows any permittee, with Ecology's informal acceptance of the certification, to get out of meeting the benchmarks at any time during the permit term, without setting forth any meaningful standards for such certification, and without requiring a modification of permit coverage or other means for public participation. The problems with Condition S8., where these hardship cases go under the permit, are discussed below. For now, it is adequate to note that S8. purports to establish a compliance schedule, but omits any dates related to such schedule. What are the standards against which a permittee's hardship certification assertion will be judged? Why are these not included in the permit? Besides trust in Ecology, how does the permit ensure that every permittee that exceeds benchmarks will not receive a hardship certification under this provision? Why is the granting of hardship status not considered a major permit modification subject to public participation requirements?

Why is the second paragraph of S7.B. not in S7.A.3.d.? To what facilities does this requirement apply?

In S7.B., it is unclear how much time a permittee has to implement the engineering report preferred option. It states, "[t]he engineering report must contain a schedule for implementing the preferred option within 12 months of acceptance of the engineering report by Ecology. The maximum time must not be any longer than the length of this permit." How are these two sentences consistent? Is the maximum time the 12 months from Ecology's acceptance or the length of the permit? Is the "length of the permit" the same as the five-year term of the permit or is it the amount of time that the permit remains in effect if continued instead of reissued at its expiration date?

In S7.B., 3) should be reworded as a declarative sentence to be consistent with 1) and 2) and the rest of the permit. For example, instead of "Implement the preferred option ...," it should say "The permittee shall implement" Without such modification, this language is disorderly and unclear.

S7.B. in its heading states “(also See Appendix 1).” What is the regulatory effect of Appendix 1? Is it part of the permit or merely explanatory? If it is explanatory, it should be in the fact sheet, not the permit. Appendix 1 includes erroneous references to permit conditions. For example, the draft permit’s S4.B. includes no Level 3 and S5. is about non-stormwater discharges. If these are mere typographical errors and the references to S4. and S5. should be to S7. and S8., the flow chart in the appendix is still problematic. For instance, it is unclear from the text of S8.B. that its “limits” are applicable to permittees that do not certify hardship as indicated by the appendix.

Condition S8.

Condition S8. provides for a compliance schedule that is in fact a noncompliance schedule of the type disallowed by the PCHB in its June 6, 2003, order in the appeal of the 2002 ISGP. There, the PCHB found that a compliance schedule in a general permit must satisfy the requirements of the water quality standards regulation: no compliance schedules for new discharges, and inclusion of an end date, generally not exceeding the term of the permit and in no case exceeding ten years. WAC 173-201A-510(4). The PCHB also ruled that compliance schedules for attainment of WQBELs for existing industrial stormwater discharges are prohibited by the CWA, 33 U.S.C. § 1342(p)(4)(A). *PSA v. Ecology*, June 6, 2003, Analysis paras. XX – XXI.

What is the duration of the S8. compliance schedule? Where is this stated? When is the opportunity for public participation in the setting of the duration of that schedule? Given that boatyard discharges are “stormwater discharges associated with industrial activity” under EPA’s regulations, how is the establishment of a compliance schedule consistent with 33 U.S.C. § 1342(p)(4)(A) as the PCHB has interpreted it? Does the permit allow compliance schedules for new discharges? If so, how is this consistent with WAC 173-201A-510? If not, where is that made clear in the permit?

S8. uses the term “effluent limits” rather than “effluent limitations.” Are these identical? Please change the terminology to “limitations” for consistency with standard permitting practice and regulatory language to avoid uncertainty and confusion.

The derivation of the effluent limitations in S8A. includes consideration of dilution factors. Are mixing zones granted to these discharges? If so, how are such grants consistent with the Ecology determination requirements of WAC 173-201A-400 and the PCHB’s June 6, 2003, order striking down standard mixing zones? If not, how can dilution factors be considered without the establishment of mixing zones? Please provide the calculations that rendered these limitations and the sources of information behind them.

What is the due date for the annual progress reports required by S8.C.? What are the required contents of these reports? Besides submission of these reports, are there any interim requirements for permittees with “compliance schedules”? Where are these described?

Condition S9.

S9.A.3. uses the terms “approved stormwater technical manuals” and “approved stormwater control manuals.” Neither term is defined. Do these terms refer to the same thing? Do they refer to “approved stormwater management manuals,” which is a defined term? Why doesn’t this provision use only the defined term instead of creating potential for ambiguity and confusion?

If the terms in S9.A.3. are not intended to have the same meaning as “approved stormwater management manuals,” what do they mean? If they are so intended, this provision would violate the law concerning public notice for permit modification as found by the PCHB in *Associated General Contractors v. Ecology*, PCHB Nos. 05-157 through 05-158, Order Granting PSA’s Fourth Motion for Partial Summary Judgment (Jan. 4, 2007). In that case, the PCHB found invalid a general permit condition requiring SWPPPs to use BMPs from unspecified manuals, so long as they provide an equivalent level of protection and are approved by Ecology, or BMPs for which a permittee provides the technical basis:

The problem with allowing equivalency of manuals not yet identified or approved, PSA correctly argues, is that when a manual is identified and approved by Ecology for use under the Permit, there is no notice, comment, or appeal period associated with the equivalency determination or approval. Nor is there any requirement under state law or regulation for any public involvement in the initial development of an alternative guidance document or manual. Once a manual is approved, applicants for coverage under the Permit can use BMPs from this newly approved manual without any requirement that they demonstrate the technical basis for the selected BMP(s). Nor is a permittee required to provide an assessment of how the BMP will satisfy the most current methodology that can be reasonably required for preventing, controlling, or abating pollution associated with discharges (AKART). In contrast, such demonstrations for non-manual BMPs are required ... to be documented in a Permittee’s SWPPP, which is publicly reviewable upon request.

Id., 8. That determination was affirmed by the Thurston County Superior Court on appeal. *Building Indus. Ass’s of Wash. v. PCHB*, Case No. 07-2-01325-1 (Thurston County Superior Court; March 3, 2009).

S9. requires permittees’ SWPPPs to include BMPs that are either justified with their technical basis or taken from an approved manual. The permit defines “approved stormwater management manuals” without reference to any specific manuals and provides that “[m]anuals produced by trade organizations may be approved if reviewed by Ecology and posted on the appropriate Ecology website.” What manuals are now “approved stormwater management manuals”? What will be the public participation process in Ecology’s approval of additional manuals? How does this provision consistent with the PCHB’s ruling?

The reference to “approved stormwater management manuals” in S9.B.3. poses the same problem.

S9.B.2. requires a monitoring plan. As discussed above, the permit should require monitoring of all points of discharge unless they are determined to be substantially identical on the basis of some specified statistically significant amount of monitoring data collected from the various points. As written, S9.B.2. improperly allows permittees to select which discharge points to sample and provides no meaningful standard to guide this selection. How is a permittee supposed to determine which discharge point is “representative of the discharge”? Why doesn’t this permit require at least as much sampling as does the ISGP?

Does this permit include any requirements for inspections? Where are these identified? What is the frequency for these inspections? What must be done for these inspections in terms of what must be inspected, for what, and how is the inspection to be recorded and reported? While S6.B. seems to require visual monitoring of the facility for stormwater on a weekly basis, there are no instructions of what this visual monitoring is supposed to do. What must a permittee do to comply with this requirement? Where does the permit explain this?

Condition S11.

Condition S11. concerns bypass. S11.A. prohibits bypass only “for stormwater events below the approved design criteria for stormwater management.” What is “the approved design criteria for stormwater management” and where is this spelled out in the permit? 40 C.F.R. § 122.41(m), the federal regulation on bypass, includes no exception for bypass for events that exceed approved design criteria. How is the permit’s exception to the prohibition consistent with the federal regulation?

S11.A.1. exempts from the bypass prohibition bypass that “is consistent with the design criteria and part of an approved management practice in the applicable stormwater management manual.” Again, what is the design criteria and where is it found in the permit? What is “the applicable stormwater management manual”? Is this the same as “approved stormwater management manual”? If so, this provision presents the same problem as the one described above concerning public participation and unlawful permit modification concerning the “approved stormwater management manual” definition.

S11.A.3.c. refers to a notification requirement in Condition S7.E. There is no S7.E. 40 C.F.R. § 122.41(m)(3)(ii) requires 24-hour notice for unplanned bypass. The draft permit should be revised to be consistent with the federal bypass regulation.

Very truly yours,

Richard A. Smith

c: Joan Marchioro, Assistant Attorney General



DEPARTMENT OF PUBLIC WORKS, OPERATIONS DIVISION

2221 Pacific Street Bellingham, WA 98229

ATTN: Peg Wendling

Telephone (360) 778-7872 ♦ FAX (360) 778-7851 ♦ pwendling@cob.org

Mr. Gary Bailey
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

May 20, 2010

RE: Comment on the Boatyard General Permit NPDES

Dear Mr. Bailey,

The City of Bellingham appreciates the opportunity to comment on the Boatyard General Permit revisions. We recognize the important services that the 88 permitted boatyard facilities in the state of Washington contribute towards the quality of life here.

Upon review of the Boatyard General Permit (permit No. WAG-030000), we believe that a more formal documentation of the acceptance of process water from a boatyard facility into a wastewater treatment facility or publically operated treatment works (POTW) is necessary. The specific provisions detailed in S2 of the General Permit do not appear to provide any mechanism for the non-delegated POTW to document the review and approval of the intended discharge from a boatyard, nor to receive the analytical data associated with this discharge.

The non-delegated treatment facilities which may ultimately receive the process water from boatyards, need to be allowed a formal mechanism for approval of this discharge, to document that permission was given, and then to assess the success of the boatyard at pollution prevention efforts. Documentation of allowable discharges will benefit both the POTW and the business, as well as allow a mechanism of clear communication between both entities.

Realize, POTW's have a legal obligation to meet the water quality provisions in their own NPDES permits. These entities deserve the right to document the review of proposed discharges to their system and to communicate with dischargers any additional provisions that may be in local codes or important to POTW operations. While we all applaud efforts to clean waters of the state of Washington, we find increasingly that POTW's are asked to take discharges that they were not designed to treat.

We suggested the inclusion of the text indicated in red, in the language of the general permit pasted below:

(Page 14 of 45)

2. Limitations

Permittees are authorized to discharge treated pressure-wash wastewater to a municipal sanitary sewer operated by a sewer authority, which does not have a delegated pretreatment program, in accordance with the following effluent limitations and monitoring schedule and upon **written** acceptance of the municipality

(page 34 of 45)

S10. REPORTING AND RECORDKEEPING REQUIREMENTS

The Permittee must report in accordance with the following conditions. False reporting is a violation of this permit.

A. Reporting

The Permittee must submit monitoring results in accordance with the minimum sampling frequencies specified in Sections S2 and S3 of this permit and must submit all data collected to Ecology. **If the permittee discharges process water to a POTW, data must also be provided to this facility at the same interval it is sent to Ecology.** The Permittee must summarize and report monitoring data collected during the previous month or sample period on a form provided, or otherwise approved, by Ecology. It must ensure that the report is postmarked or received by Ecology no later than the 28th day of the month following the sample collection month. The report(s) must be sent to the appropriate regional office of Ecology.

Finally, if a boatyard is granted permission to discharge process water to a delegated or non-delegated POTW, we are unclear how this allowable discharge interfaces with the provisions of 40 CFR 403, the Industrial Pretreatment Program. This program is the regulatory and programmatic framework in which the DOE and a POTW's utilize as they work with their industrial wastewater dischargers. Please realize that the inclusion of wastewater from a commercial facility outside of the Industrial Pretreatment Program may not smoothly integrate into existing POTW programs for interactions with these customers.

Thank you for your consideration. Feel welcome to contact me if you need any clarification.

Sincerely,

Peg Wendling
Technical Supervisor
City of Bellingham Department of Public Works

TRINA BORTKO

May 28, 2010

Gary Bailey
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Draft Boatyard General Permit No. WAG030000

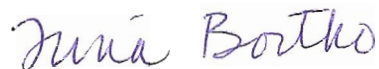
Dear Mr. Bailey:

Thank you for the opportunity to comment on the Draft Boatyard General Permit No. WAG030000.

According to the draft permit, all benchmark exceedances under the existing permit follow the facility to the new permit. May I suggest that, if a facility installs a new treatment system, that it be allowed to "reset the clock" and start with a clean slate as to past exceedances? This would provide an incentive to install or update treatment systems.

Under the draft permit, it appears that, if the facility installs a new treatment technology but continues to be unable to meet the benchmarks, the facility will be forced to continue expending resources to perform additional Level 3 engineering responses and install additional treatment systems. With banks unwilling to lend money, this open-ended cycle could put the boatyards in a precarious financial position.

Sincerely,



Trina Bortko

MAY 25 2010

WATER QUALITY PROGRAM



2620 West Commodore Way, Seattle, WA 98199Phone: (206) 283-3003 Fax: (206) 283-3041

May 21, 2010

Mr Gary Bailey
Department of Ecology
P. O. Box 47600
Olympia, WA 98504-7600

Dear Mr. Bailey;

Below are our comments on the proposed Boatyard General Permit. Your consideration of these concerns/ comments is greatly appreciated. We look forward to continuing our fine relationship with you and your staff as we move forward with this new permt.

On page 14 paragraph S2 you reference "non-delegated POTW". Please explain the difference between a delegated POTW and a non-delegated POTW.

On page 14 paragraph S1.C.4 please explain what you want not just a reference to some document we will need a lawyer to understand.

On page 16 paragraph C last sentence references paragraph E and there is no paragraph E.

Page 21, paragraph i is repeated.

Page 21 paragraph S4, please tell us what you want. Referring us to hundreds of pages of federal and state law and requiring compliance will only open us to suit by environmental groups who will extort money from us to pay the lawyers they hire to find where we failed to comply with these laws.

Page 22 paragraph S4.c Mixing Allowance, how does this apply? What does it mean for the numbers we must meet? Does this change anything elsewhere in the permit?

Page 24 paragraph S6.D Laboratory Accreditation, 173-50 does not provide a list of accredited labs. Where do we find this?

Page 25 2. Level Two Response, it seems redundant to require a lower level, level one report when a more exhaustive level two report is being prepared. This seems like useless effort on the part of the boatyard and just generates more filing and management on DOE's part with no benefit. This same comment applies to level three reports. If a level two or level three is required a level one report should not be required. In fact once the level two point has been

reached level one reports should be suspended. It would also be useful if Ecology provided a sample Level Two report as a guide line. This will promote understanding and prevent the condition of one person saying the report is inadequate while someone else thinks it's compliant.

Page 26 Level Three Reports sub para b) states "Condition S8.B of this permit applies during the implementation period from the time Ecology approves the engineering report until the treatment BMP is in place." This makes no sense since S8.B imposes limits instead of benchmarks that will expose the boatyards to suits by environmental groups during the period they are implementing the solutions in the level three engineering report. We already know the yard cannot make it's numbers, that's why we are doing a level three report. The result will be that precious funds required to implement the level three requirements will be siphoned off for legal fees to pay the lawyers of the environmental group filing suit. Then, if we understand the proposed permit, after we install the treatment equipment we go back to benchmarks.

Page 26 paragraph S7.B makes no sense. If a hardship yard cannot make the benchmarks why put them on limits where they can be sued by environmental groups or fined by Ecology. All this will do is pull funds away from being able to do a level three engineering study and spend it on lawyers for the environmental groups or force the yards out of business. Then after they obtain funds and do the level three report and install the equipment they still have limits that are much more restrictive than the benchmarks the non-hardship yards are held to. How is this logical?

Page 28 second paragraph..."The SWPPP must document how stormwater BMPs were selected, the pollutant removal performance expected from the selected BMP and the technical basis which support the performance claims for the selected BMPs." How could you possibly believe that a small business with less than 50 employees and many times less than 20 employees has the resources to meet this requirement. This entire paragraph is unreasonable and assumes a level of technical expertise and knowledge that small businesses simply do not possess.

Page 32 paragraph #3. Second line references conditions in Condition S2.D.2. This paragraph does not exist.

Page 34 paragraph vi) first bullet, references "Condition S3, Monitoring Requirements". S3 has nothing to do with monitoring requirements.

Page 34 paragraph vi) fourth bullet, references "Condition S7, Reporting and Recordkeeping Requirements." Paragraph S7 has nothing to do with reporting and recordkeeping.

Page 35 paragraph D. second line references "Condition S3.C". This condition does not exist.

Page 37 paragraph S11.3.c references "Condition S7.E". This condition does not exist.

Page 45 Appendix 1, all paragraph references are invalid.

This permit still has not addressed the issue of what happens when we submit a level three engineering study, execute the study as approved and still don't make our benchmarks or limits.

Before large capital investments can be made this must be resolved. Are we back into pouring more funds into ever more expensive technology? Will be still be doing level one, level two, and another level three report? When is it good enough?

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Anderson', with a stylized, flowing script.

Scott Anderson
President & Owner

Bailey, Gary (ECY)

From: Tritt, Galen (ECY)
Sent: Thursday, May 27, 2010 2:02 PM
To: Bailey, Gary (ECY)
Cc: Baumgarten, Kurt (ECY); Misko, David (ECY); Underwood, Michelle (ECY-HWTR)
Subject: WQ program's Boatyard General Permit - Public comment by HWTR

Gary,

While thinking more about this and prompted by discussions with Kurt Baumgarten, it appears that I may have been in error about the need to modify the Boatyard General Permit itself. Kurt reminded me that boatyards might not necessarily take the fact sheet into account, and may just follow what is in the permit itself. That being said, it would make sense to put a sentence into the permit in one of the sections: on page 19 where it discusses S3 BMPs 'solids management', or 'S8. solid waste management' or 'G12. Removed substances' that says something about the proper method of material disposal depends on how it designates? If it were to fit better under G12 'general conditions' It could be something along the lines of:

G12. REMOVED SUBSTANCES

Collected screenings, grit, solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of stormwater must not be resuspended or reintroduced for discharge to State waters. **The disposal of the solids or sludge materials would depend on the contents. Following designation, they would be disposed of as either a dangerous waste or solid waste.**

This would clue them in that they needed to ask some questions about the specific material to be disposed of.

Anyway, I wanted to send this along to you for your consideration.

Thanks
Galen

Galen H. Tritt
HWTR-NWRO
Washington State Dept. of Ecology
Bellingham Field Office
(360) 715-5232

From: Tritt, Galen (ECY)
Sent: Tuesday, May 25, 2010 10:03 AM
To: Bailey, Gary (ECY)
Cc: Misko, David (ECY); Underwood, Michelle (ECY-HWTR); Baumgarten, Kurt (ECY)
Subject: WQ program's Boatyard Fact Sheet - Public comment by HWTR

To Gary Bailey:

The comment on the 'boatyard fact sheet' is stated below. This is in response to your public notice, and request for email comments within this web link: <http://www.ecy.wa.gov/programs/wq/permits/boatyard/index.html>

Please consider this as our 'formal comment' in follow up to my earlier email that I sent you on April 27th.

Galen H. Tritt
HWTR-NWRO
Washington State Dept. of Ecology
Bellingham Field Office
(360) 715-5232

Mr. Bailey;

Ecology's Hazardous Waste and Toxics Reduction Program would like to bring to your attention recent analytical data that contradicts guidance currently found in page 15 of Boatyard General Permit fact sheet. The specific language is provided below:

Option 1 - Recycle/conservation

“The preferred means of preventing pollution from pressure washing hulls is recycling of the pressure wash wastewater. The typical configuration is multi-stage filtration with some storage capacity. Water lost from evaporation during pressure washing can be made up from rain water falling on the wash pad or from tap water. The solids collected from the filters or from sedimentation in the storage tank are air-dried under cover and handled as solid waste. The recycled water may eventually become contaminated, requiring disposal or treatment. In this case the wastewater may be collected by a licensed waste hauler and treated off-site.”

Under Chapter 173-303 WAC, Washington's "Dangerous Waste Regulations", it has been determined that the solids from pressure washing boat hulls designates at a "state only dangerous waste" for being toxic to fish (with a waste code of WT02). Sampling and analytical data from several boatyards in the North Sound (Whatcom and Skagit Counties) have revealed consistent designation and the subsequent requirement for proper management as dangerous waste. This guidance has been provided to North Sound boatyards by Ecology staff as well as Local Source Control Specialists within Bellingham, Whatcom County, Skagit County, and San Juan County. We encourage its statewide application as Ecology's works to provide a level playing field for this industry across Washington.

We have attached a copy of one of the reports that has gone out to the boatyards that we have visited that has more information on the designation and handling of this material, so you can see both what we have been telling them, as well as the reference materials web-links. If you would like to see some of the bio-assay test results, let us know and it can be sent to you. In any case, it would be useful for this to get corrected, as no doubt the boatyard owners will reference this information and potential dispose of improperly.

Page 38 of the Permit:

S12. SOLID WASTE MANAGEMENT

The Permittee must manage all solid waste materials to prevent the release of leachate into waters of the state.

The section of the permit that the fact sheet references, just states to manage properly. This would probably not need to be changed as long as the fact sheet expanded on the management of this material?

Feel free to call to discuss this if further clarification is needed.

Thanks

Galen H. Tritt
Hazardous Waste Specialist HWTR-NWRO
Washington Dept. of Ecology
Bellingham Field Office
(360) 715-5232

and

David S. Misko
Supervisor, Hazardous Waste Compliance
Washington Dept. of Ecology - NWRO

(425) 649-7014



City of Seattle

Seattle Public Utilities

Ray Hoffman, Director

May 28, 2010

Gary Bailey
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Gary.Bailey@ecy.wa.gov

Subject: City of Seattle written comments on the Draft NPDES Boatyard General Permit dated April 21, 2010

Dear Mr. Bailey:

Please consider the City of Seattle's comments in response to Ecology's public notice regarding the Draft NPDES Boatyard General Permit (Attachment 1).

Thank you for the opportunity to comment. The City of Seattle appreciates Ecology's efforts to reissue the permit. We look forward to continuing to work closely with Ecology and other jurisdictions, organizations, and the public to protect and improve our valuable aquatic ecosystems and Puget Sound.

If you have any questions regarding these comments, please feel free to contact me at (206) 386-4576 or Sherell.Ehlers@Seattle.gov.

Cordially,

Sherell Ehlers, P.E.
Stormwater Policy Advisor
SPU Drainage and Waste Water Quality Division
Utility Systems Management Branch
Seattle Public Utilities

Attachment: 1. City of Seattle Comments on the April 21, 2010 Revised NPDES Boatyard General Permit.

cc: Miles Mayhew, SPU Restore Our Waters & Stormwater Regulations Division
Theresa Wagner, Seattle Attorney's Office
Jeff Smith, SPU Project Management and Engineering Division
Beth Schmoyer, SPU Project Management and Engineering Division
Tanya Treat, SPU Project Management and Engineering Division
Kevin Buckley, SPU Drainage and Waste Water Quality Division

Attachment 1: City of Seattle Comments on the April 21, 2010 Draft NPDES Boatyard General Permit.

1. General Comment:

The permit does not sufficiently emphasize that a boatyard site must use BMPs to prevent stormwater from coming into contact with process water and to otherwise prevent the contamination of stormwater. Seattle Public Utilities (SPU) and other sewer authorities may choose to accept contaminated stormwater if consistent with applicable local rules and regulations as well as infrastructure constraints, but it should not be a default solution. In areas of boatyards, the sanitary sewer systems are often designed assuming stormwater would drain directly to the adjacent water body, so sewer capacity is usually a concern for peak storm discharges. Because of capacity constraints, the boatyard permit should require that all applicable BMPs be utilized by the permittee to prevent the commingling of stormwater with process wastewater and to prevent stormwater contamination. Several of Seattle's suggestions address these general concerns. (Note that "sewer authorities" includes both POTWS and collection systems, which may be operated by different entities.)

2. Please consider the following change to the process wastewater definition, at page 9; see General Comment:

"Process wastewater" means any water which, during manufacturing or processing comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. ~~Stormwater that commingles with process water becomes process water.~~ This definition of process wastewater does not include non-stormwater discharges conditionally approved under section S2.C. *Non-Stormwater Miscellaneous Discharges*.

3. For clarity, please consider adding a preamble to section S1.A, page 13, to clearly define the application of the permit in regard to discharges of stormwater and pressure washing wastewater.

Please consider adding the following language:

This statewide permit applies to boatyards that discharge stormwater to a surface water body or to a storm sewer system that drains to a surface water body. This general permit also regulates wastewater from pressure washing in boatyards.

4. Per section S9. Stormwater Pollution Prevention Plan, every facility covered by this permit must prepare and maintain a Stormwater Pollution Prevention Plan (SWPPP). Therefore, please consider removing the qualifier of "If required to have a Stormwater Pollution Prevention Plan (SWPPP)" of Section S1.C, item 3, page 14.

5. Per Ecology's stormwater manual, source control BMPs are structures or operations that are intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants. Therefore, prior to requesting and the allowance of a discharge of any contaminated stormwater to a POTW, the permittee should be required to demonstrate how the amount of wastewater will be reduced by prevention and separation of stormwater and uncontaminated water from entering the POTW.

Given the statements above and the General Comment, please consider revising Section S2.B, page 16, as follows:

B. Boatyards discharging stormwater to a non-delegated POTW

The Permittee must submit a request to the delegated POTW and the local Sewer Authority demonstrating:

- That no other option is feasible
 - That the POTW has excess wet season hydraulic capacity (no sanitary sewer overflows or treatment system bypasses)
 - That the POTW is willing to accept the discharge
 - How it will reduce the amount of wastewater sent to the POTW by separating stormwater and uncontaminated water from wastewater, and discharging ~~it~~ stormwater and uncontaminated water directly to a receiving water body. ...
6. SPU (and King County) have different rules and parameters when regulating discharges of wastewater versus discharges of stormwater to a delegated POTW. Therefore, these sections should be addressed separately for delegated POTW as it is in the previous sections S2.A & S2.B for non-delegated POTW.

Given the statements above and the General Comment, please consider the following changes to Section S2.C, page 16.

C. Boatyards which discharge treated pressure-wash wastewater or stormwater to a delegated POTW

1. Discharge of treated pressure-wash wastewater to a delegated POTW

Permittees may discharge pressure-wash wastewater ~~or stormwater~~ to a sanitary sewer system operated by a municipality with a delegated pretreatment program provided they receive a discharge authorization from the delegated municipality and authorization from all other local sewerage authorities. Limitations, monitoring and reporting requirements will be determined by the municipality. All Permittees discharging wastewater to a delegated municipal sanitary sewer system must comply with any applicable sewer use ordinances adopted by the municipality and/or local sewerage authority operating the sewer system. ~~Permittees which discharge pressure-wash water and stormwater to a delegated POTW must not discharge to any water of the state except for miscellaneous discharges described in paragraph E. below.~~

2. Discharge of stormwater to a delegated POTW

Discharging stormwater to a delegated POTW is normally prohibited, as this tends to overload the sewage conveyance system and treatment plant during storm events when flows are already high. Such discharges require the approval of all local Sewer Authorities. Limitations, monitoring and reporting requirements will be determined by the municipality. All Permittees discharging wastewater to a delegated municipal sanitary sewer system must comply with any applicable sewer use ordinances.

Permittees may be allowed to discharge stormwater to a delegated POTW only upon special approval by the local Sewer Authority and the delegated POTW. The Permittee must submit a request to the delegated POTW and the local Sewer Authority demonstrating:

- That no other option is feasible
- That the POTW and sewage conveyance system have excess wet season hydraulic capacity (no sanitary or combined sewer overflows or treatment system bypasses or other capacity limitations)
- That the POTW and local Sewer Authority are willing to accept the discharge
- How it will reduce the amount of wastewater sent to the POTW by separating stormwater and uncontaminated water from wastewater, and discharging the stormwater and uncontaminated water directly to a receiving waterbody.

The request must also certify that the Permittee routinely practices all BMP's applicable to the boatyard. The limits, upon approval of the discharge by delegated POTW and the local Sewer Authority, are the same as 2.A.2 above unless the POTW has more stringent limits in which case the more stringent limits will apply (the Permittee must notify Ecology of more stringent POTW limits). The POTW and the local Sewer Authority may impose additional requirements in the approval for this discharge, such as flow equalization and characterization of any uncontaminated water discharges.

7. Concerning the statement that “*permittees which discharge pressure-wash water and stormwater to a delegated POTW must not discharge to any water of the state...*”. The language in S2.C. seems to assume that stormwater discharge to the sanitary sewer system will be allowed. This will not be technically feasible in many cases, because sanitary sewer systems are not generally designed with the necessary capacity to convey stormwater flows. The permit should identify discharge to sanitary as a consideration, but state that this needs to be approved by the local sewer authority. If there is stormwater that meets all water quality requirements for discharge to a water body, the permit should not disallow this discharge to a water body. In addition, even if a local sewer authority accepts some stormwater from a Permittee, there may be cause for the local sewer authority to only allow a portion of the site's stormwater to be discharged into the POTW while other portions should be discharged to a water body. The permit should recognize and allow for this.

Therefore, the statement in the permit “Permittees which discharge pressure-wash water and stormwater to a delegated POTW must not discharge to any water of the state except for miscellaneous discharges described in paragraph E. below” should be struck from the permit.

Additionally, there is no paragraph E in the document to refer to in the draft permit. Please add paragraph E or delete reference.

8. Concerning the sentence in Section S4.a. *“If the stormwater conveyance system leaves the permitted facility, the receiving water is the water in the conveyance system at the property boundary of the permitted facility.”* This statement seems inconsistent with the rest of S4.a; ordinarily water in a stormwater conveyance system is not considered the receiving water. Please consider modifying to clarify intent.
9. Section S9.B.3 references “Condition S2.D.6”. “Condition S2.D.6” cannot be found in the permit. Please update reference.
10. Per Ecology’s stormwater source control manual, both operational and structural source control BMP’s that are “applicable” for a given activity are required to be implemented for commercial and industrial establishments listed in Appendix IV-A, where required by Ecology's Industrial Stormwater General Permit or by local government ordinances. Boatyards are included in this list of commercial and industrial establishments. Therefore Operation Source Control BMPs and Structural Source Control BMPs listed as “applicable” should be added to the permit language in section S9.B.3.

Given the statements above, please consider the following changes to Section S9.B.3, page 32.

a. **Operational Source Control BMPs:** Operational BMPs are common to all facilities. The categories listed below are a minimum set of BMPs that must be included in the SWPPP.

Operational Source Control BMPs

1) The SWPPP shall include the Operational Source Control BMPs listed as “applicable” in Ecology’s SWMM, approved stormwater technical manuals chosen per S9.A.3, or other guidance documents or manuals approved in accordance with S9.A.3.

Structural Source Control BMPs

1) The SWPPP shall include the Structural Source Control BMPs listed as “applicable” in Ecology’s SWMM, approved stormwater technical manuals chosen per S9.A.3, or other guidance documents or manuals approved in accordance with S9.A.3.

11. Please consider adding the following definitions for clarity and for consistency with NDPES Industrial Stormwater General Permit:

- | | |
|-----------------------------------|----------------------------------|
| • Discharge | • Ground Water |
| • Illicit Discharge | • NPDES |
| • Operational Source Control BMPs | • Pollutant |
| • Pollution | • Reasonable Potential |
| • Representative | • Runoff |
| • Sanitary Sewer | • Sediment |
| • Significant Amount | • Source Control BMPs |
| • Storm Sewer | • Structural Source Control BMPs |
| • Treatment BMPs | • Water Quality Standards |

12. Several of the definitions in the Boatyard General Permit are not consistent with the definitions in the Industrial Stormwater General Permit. Please consider revising the following definitions for consistency with the Industrial Stormwater General Permit:
- AKART
 - Best Management Practices
 - Stormwater
 - Benchmarks
 - CWA
 - Stormwater Pollution Prevention Plan (SWPPP)
13. Please consider adding the following definition for clarity:
- Tidal Grid
 -
14. Please consider revising the following Definitions as follows for clarity:
- “Pressure washing” means the use of a water pressure washer to remove paint or biological growth from a vessels hull. “Pressure washing” also includes the practice of mechanical or hand scrubbing and rinsing with low pressure water from a hose.
- “Process Change” means any modification of the facility that would:
- add additional impervious surface or acreage such that stormwater discharge volume would be increased by 25% or more; or
15. Language should be added to the permit regarding illicit discharges to be consistent with the NPDES Industrial Stormwater General Permit. Additionally, language referencing water from washing vehicles or equipment, steam cleaning and/or pressure washing from the NPDES Industrial Permit should be added as well for clarity and consistency.

Given the statement above, please consider adding the following language to the Section S9.3.a

Illicit Discharges: The SWPPP shall include measures to identify and eliminate the discharge of process wastewater, domestic wastewater, noncontact cooling water, and other illicit discharges, to stormwater sewers, or to surface waters and ground waters of the state. The Permittee can find BMPs to identify and eliminate illicit discharges in Volume IV of Ecology SWMM and Chapter 8 of the SWMM for Eastern Washington.

Water from washing vehicles or equipment, steam cleaning and/or pressure washing is considered process wastewater. The Permittee must not allow this process wastewater to comeingle with stormwater or enter storm drains; and must collect in a tank for off-site disposal, or discharge it to a sanitary sewer, with written approval from the local sewer authority.



May 28, 2010

Washington State Department of Ecology
Attn.: Gary Bailey
P.O. Box 47600
Olympia, WA 98504-7600

Sent electronically to: gary.bailey@ecy.wa.gov

Dear Mr. Bailey:

Thank you for this opportunity to comment on the updated Boatyard General Permit (the "Permit") recently proposed by the Department of Ecology ("Ecology").

The Washington Public Ports Association (the "Association") is a public agency trade association authorized by the state legislature in 1961 as the coordinating organization for all public port districts in the state. Membership is comprised of about 70 ports with interests that include several marinas and boatyards. These comments will provide a general overview of the policy ramifications many public boatyards could face as a result of the revised Permit as drafted and represent an overarching perspective to compliment the more specific comments you will receive from individual public boatyards.

The release of this updated permit comes at an important time when the industry press reports¹ that boatyards have "reduced their average dissolved copper output by 52 percent since January 2006." Even so, many continue struggling to meet the extremely low guidelines established by the last permit. They also struggle to keep their balance sheets positive in this difficult economic climate, so the added expense of infrastructure upgrades necessary to meet

¹ Deborah Bach, "Boatyards have cleaned up act, study finds," *Pacific Northwest Boating News*, Feb. 17, 2010.

high regulatory expectations leaves many managers questioning the future of their operations. Legislative and legal uncertainties only add to their perplexity.

Given the success boatyards have shown in decreasing their copper discharges and the uncertainties they currently face, we are encouraged by two elements of the new Permit:

- First, we are encouraged that Ecology continues to use an adaptive management approach that imposes copper and zinc guidelines as “benchmarks” rather than “limitations,” as described in the Fact Sheet².
- Second, we are encouraged that the agency proposed slightly more achievable benchmarks than existed in the previous Permit and encourage Ecology to at least hold firm with these more realistic expectations.

We would also like to recognize the agency’s effort to accommodate economically challenged yards by allowing them to apply for economic hardship designation. However, the conditions of the economic hardship certification would require yards to meet more stringent *limits* that exceed the new benchmarks described in the draft Permit. Furthermore, the yards would be required to report annually on their success in meeting these new limits. The result, as we read the Permit, is that yards filing under the new economic hardship certification would be forced to abandon the existing adaptive management approach by adopting stricter limits (rather than benchmarks) that they would be required to meet and report in perpetuity. Because it seems unlikely that many yards would expose themselves to more rigid on-going regulatory scrutiny (particularly in times of economic crisis), our sense is that this provision would be largely unused by public boatyards.

An alternative approach might entail the following:

- Maintain the technology-based benchmarks for economically distressed yard.
- Submit a compliance schedule for implementing additional best management practices.
- Submit a financial plan to Ecology that calls for purchase of the necessary equipment within the compliance schedule timeline. Include a payment schedule for a designated Ecology inspection every six months for a designated time to ensure mandatory implementation of identified best management practices, compliance and financial schedule.

This approach would likely be used by more boatyards. More importantly, it would likely have the desirable policy effect of bringing more yards in compliance. The fundamental problem with the economic hardship certification process described in the draft Permit is that it does

² Ecology, “Fact Sheet for NPDES Boatyard General Permit Reissuance,” April 21, 2010, pg. 18.

not change the basic question posed to struggling yards – “Do we go out of business or make new investments (that we currently can’t afford) in order to meet this round of additional regulation?” The alternative approach described above would put more yards that are operating on the margin in a position to make the necessary changes.

Why public boatyards matter

Public boatyards serve an important purpose in our state’s waterfront communities and generally operate as one line of business in a larger operation that may include a marina, a boat launch, waterfront facilities and other public services. These facilities often serve as economic centers in communities around the state and are economic anchors for local businesses that may include grocery stores, hardware stores, galleries and restaurants. This is particularly true in small and rural communities that are transitioning from resource-based economies to economies that include tourism as a primary component, but it is also true in communities where maritime trades such as fishing continue to provide jobs for many families.

If the cost of operating a boatyard becomes too great, the port must weigh the community benefits of the yard to the economic reality of increasing regulatory costs. These additional regulatory costs are not limited to boatyards as other lines of business must also respond to added costs. For example, more stringent regulation can make dock replacements more expensive or call for infrastructure retrofits in order to meet new stormwater requirements.

In the case of boatyards, infrastructure upgrades necessary to meet Ecology’s Permit guidelines could be significant. A recent report³ sponsored jointly by Ecology, the Northwest Marine Trade Association, and the Puget Soundkeepers Alliance shows the significant investment boatyards will face in order to meet compliance:

Total Costs and Net Present Value per Acre for a Typical Boatyard⁴

Present Value Analysis	StormwaterRx Aquip	Siemens Water Technologies WWIX	Water Tectonics Wave Ionics	Site Improvements
Capital Costs (Year 0)	\$46,000/acre	\$41,000/acre	\$74,000/acre	\$117,000/acre
Annual O&M Costs (Year 1 to 15)	\$64,000/acre	\$319,000/acre	\$24,000/acre	\$13,500/acre
Present Value of O&M Costs	\$64,000/acre	\$319,000/acre	\$24,000/acre	\$13,500/acre
Net Present Value	\$110,000/acre	\$360,000/acre	\$98,000/acre	\$131,000/acre

³ Arcadis, *Boatyard Stormwater Treatment Technology Cost Analysis: Draft Report*, May 2008.

⁴ Ibid, pg. 16.

It is worth noting that “for boatyards larger than 2 acres, the cost per acre will decrease and for boatyards smaller than 2 acres, the cost per acre will increase.”⁵ Therefore, the cost will disproportionately impact smaller boatyards. This is another reason why a more usable solution for economically distressed yards is necessary.

Economics aside, boatyards are critical to meeting the public’s environmental health interests. Without boatyards, enforcement becomes difficult or even impossible. Anyone can walk down to their local boatyard and see what precautions are being implemented to keep trace levels of copper and other heavy metals out of the state’s waterways. However, if local boatyards close, where will bottom painting and other work get done? Some boat owners will likely go to other yards as consolidation occurs, but others will likely resort to practices we’ve seen in the not too distant past – doing bottom work covertly in driveways and garages or through fly-by-night operations. There is no doubt that such a result would derail efforts to preserve and protect the state’s environmental resources and public health.

We respectfully submit these comments for your consideration and look forward to further discussion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Johan Hellman', with a long horizontal flourish extending to the right.

Johan Hellman
Assistant Director

Cc: Keith Phillips, Governor Gregoire’s Policy Office

⁵ Ibid, pg. 15.



1900 N. Northlake Way, Suite 233
Seattle, WA 98103-9087

Phone: (206) 634-0911
Fax: (206) 632-0078

www.nmta.net
www.seattleboatshow.com

George Harris
President

Bill Youngsman
Chairman

Board of Trustees

Greg Allen
Yacht Masters Northwest

Bill Baker
Bake's Marine Center

Michael Burns
Smoker Craft, Inc.

Jim Brown
YachtCare, LLC

Mark Bunzel
Fine Edge

Troy Cline
Suzuki Motor Corp.

Bruce Hedrick
Northwest Yachting Magazine

Dwight Jones
Elliott Bay Marina

Greg Norwine
Windworks Sailing Center

Geo Tamblin
Lake Union Yacht Center

Bob Walker
Lake Union Sea Ray

John Wedeberg
John Wedeberg & Assoc.

*Promoting the
Recreational Boating
Industry in the
Pacific Northwest*

May 26, 2010

Gary Bailey
Department of Ecology
PO Box 47600
Olympia, WA 98506-7600

Re: 2010 Draft Boatyard Permit

Dear Gary:

Thank you for reviewing these comments on the 2010 Draft Boatyard NPDES Permit on behalf of Northwest Marine Trade Association.

NMTA represents over 700 businesses in the recreational boating industry, including approximately 60 members with boatyard NPDES permits. Our comments are intended to generally represent the position of our industry; however individual members reserve the right to submit their own or differing comments.

NMTA members are committed to maintaining the highest level of water quality in Puget Sound and all of Washington's rivers and lakes. Consistent with that commitment NMTA worked closely with the Puget Soundkeeper Alliance in 2008 to evaluate and implement the best available technology to remove copper from stormwater runoff from boatyards. Our goal was to replace litigation with agreed action to meet the goals of the Clean Water Act. NMTA and PSA reached agreement on benchmarks and permit terms that would allow boatyards to implement advanced treatment technology or the equivalent water quality that can be achieved through treatment technology.

The proposed benchmarks reflect that agreement based on more current monitoring data from facilities that have installed the treatment technology in advance of the new permit. This is appropriate and the permit benchmarks should reflect the actual performance levels that can be achieved by the treatment technology that NMTA and PSA endorsed in 2008.

It is also important that the permit continue to be based on the implementation of best management practices. The purpose of benchmarks is to trigger corrective action and review of best management practices. While the proposed benchmarks in this permit are higher than the state's Industrial Stormwater General Permit, the benchmarks reflect a commitment to install advanced active filter treatments or its equivalent. This approach is far more rigorous than what is imposed on any other industrial facility covered under a general permit in our state.

Points in agreement

1. We are pleased that this is a technology-based permit; and that the numeric benchmarks reflect the performance of full-scale treatment systems.
2. The permit will require compliance with water quality standards and attempts to provide business some room for working to achieve the standards.
3. The general concept of a hardship provision is a good one. It acknowledges that many boatyards cannot currently afford the technology necessary for meeting the new permit requirements.
4. We approve of Ecology's decision to require boatyards to sample five times per year during the rainiest months.
5. We are content with the terms of the mixing zone calculation. Receiving water studies cited in the fact sheet demonstrate that boatyards are not causing or contributing to a violation of water standards. The mixing zone provision is reasonable in light of the permit obligations to implement advanced treatment technology. Boatyard implementing treatment should be afforded a presumption that they are in compliance with water quality standards.

Points of concern

1. The hardship provision (S8) – while conceptually sound – will not be a feasible option for most boatyards. First, the effluent limits triggered by applying for the provision are lower than what is *consistently* achievable by stormwater treatment technologies. Should a boatyard choose the hardship provision as written, they would be opening up their business to penalties and liability for citizen suits. Given these high stakes, our association cannot put our faith in the conjecture that treatment technology will improve this dramatically within the period of the hardship provision.
2. Also as part of section S8, the lead effluent limit (10µg/L) established by the hardship provision will, in the majority of cases, be *impossible* for boatyards to achieve. We do not understand why there is a limit for lead when lead is not parameter of concern in boatyard runoff as documented in the fact sheet.
3. S3 (k.) regarding Sewage and Gray Water Discharges puts boatyard owners in an awkward position with their customers. This provision is inconsistent with state law regarding gray water discharge (although not inconsistent with black water, or sewage discharge) and could be in conflict with the Federal Clean Boating Act of 2008, which excludes recreational boaters from federal and state permitting requirements.

Thank you for reviewing these comments and taking them into consideration. We are happy to provide any additional feedback or clarification needed.

Sincerely,



Marina Hench
Director of Government Affairs



336 Admiral Way · Edmonds, WA 98020-7214 · (425) 774-0549 · FAX (425) 774-7837 · www.portofedmonds.org

May 25, 2010

Mr. Gary Bailey
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
gary.bailey@ecy.wa.gov

Dear Mr. Bailey:

Thank you for the opportunity to comment on the Department of Ecology's draft Boatyard General Permit (Permit) dated April 21, 2010. The Port of Edmonds appreciates the efforts made by Ecology to improve the Permit over the previous draft Permit. The Port has the following comments:

Comment # 1 – Condition S2.D.3, Benchmarks

The Port strongly agrees with the continued use of benchmarks for copper and zinc in stormwater, as opposed to limits. From the draft revised Permit:

These technology-based benchmarks are calculated long term averages from a limited amount of experimental and performance data. Ecology may modify this permit to raise these benchmarks during the term of this permit if the long term average for the treatment is demonstrated to be higher than used to calculate these limits.

The Port also agrees with the more realistic technology-based benchmark values for copper of 50 µg/L as a seasonal average benchmark and 147 µg/L as a daily maximum benchmark, versus the copper benchmarks in the previous draft Permit (14.7 µg/L seasonal average and 29 µg/L daily maximum). The technology-based benchmark values for copper in the new draft Permit more accurately incorporate full-scale treatment technology performance data and make better allowance for the likely variability in the copper treatment effectiveness over longer-term operation. The copper benchmark values in the previous draft Permit were based on the boatyard pilot study results without an adequate factor of safety because the pilot study was only conducted for a short 3 month time frame. The StormwaterRx Aquip® system was tested at our yard, which had the lowest influent copper and zinc concentrations. The pilot study was completed during a period of very light work yard activity relative to average conditions. It is expected that the performance of the media will decrease over time as it becomes saturated with adsorbed metals.

Comment # 2 – Condition S7, Level Three Response and Imposition of Limits

The Port is strongly concerned over the condition placed on those boatyards under a Level Three Response and that are triggered to produce an engineering report. From both conditions S7.A and S7.B:

Condition S8.B of this permit applies during the implementation period from the time Ecology approves the engineering report until the treatment BMP is in place.

Condition S8.B of the Permit would impose limits (versus benchmarks) on copper and zinc until the treatment BMP is in place. The Permit already contains the requirement to have a schedule to install the treatment BMP within one year of Ecology approval of the engineering report. There is no additional need to implement limits

during this short period. With the use of limits, and given the variability of stormwater quality data, there would be a great liability to Boatyards of citizen-groups bringing a lawsuit against the boatyard for even a one-time limit exceedance before the boatyard is able to complete installation of the stormwater treatment system. The Port suggests that the italicized text above be removed from condition S7 of the Permit.

Comment # 3 – Condition S8, Conditions Applicable to Facilities Receiving a Hardship Certification

The Port agrees with Ecology having a process for boatyards that are currently unable to fund the equipment necessary to meet the technology-based benchmarks to be granted a financial hardship certification by Ecology and be allowed more time to implement treatment. However, the imposition of limits versus benchmarks for boatyards that are granted financial hardship certification by Ecology is inappropriately punishing those yards where installation of treatment technology would be a true hardship. With the known variability in stormwater quality data, including variability in stormwater treatment data over time, it is entirely likely that there could be an occasional exceedance of the benchmark or limit value even for a boatyard that has properly implemented treatment. An exceedance of a limit would immediately put the boatyard under the risk of enforcement actions or fines by Ecology, and even more troubling it would open the ability of citizen groups to bring suit against the boatyard.

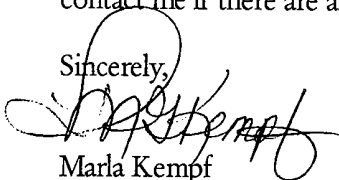
Not only is the imposition of limits inappropriate for facilities granted hardship certification, but the establishment of much lower copper concentration limits (14 and 29 $\mu\text{g/L}$ for seasonal average and daily maximum limits, respectively) than the benchmark values that apply to other boatyards is unfair.

The limits established in condition S8.A and S8.B make financial hardship certification a completely moot point and are such that there would be no true accommodation of Boatyards that would be put under financial hardship by the new Permit. No rational boatyard would choose to have lower concentration limits imposed for the accommodation of just some additional time to purchase and install treatment system equipment.

The Port recommends that conditions S8.A and S8.B be deleted. The condition S8.C that requires the boatyard to submit an annual progress report can be maintained to give a disincentive to those boatyards that can truly afford treatment from requesting financial hardship certification. If necessary, Ecology could impose other conditions along with the annual report. For example, the Permit could require the boatyard to perform and document more frequent inspections and to implement enhanced good housekeeping and operational BMPs.

The Port appreciates the Department of Ecology's consideration of these comments. Please feel free to contact me if there are any questions related to these comments.

Sincerely,



Marla Kempf
Deputy Director

cc: Bob McChesney, Executive Director
Port Commissioners
George Harris, Marina Hench - NMTA
Eric Johnson, Johan Hellman - WPPA
Bill Moore, Polly Zehm - Department of Ecology



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Washington State Habitat Office
510 Desmond Drive SE, Suite 103
Lacey, WA 98503

May 28, 2010

Mr. Michael A. Bussell
Director, Office of Water and Watersheds
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Mr. Gary Bailey
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Mr. Kelly Suswind
Water Quality Program Manger
Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Dear Mr Bussell, Mr. Bailey, Mr. Suswind:

The State of Washington Department of Ecology (Ecology) has recently issued a proposed National Pollution Discharge Elimination System (NPDES) Boatyard General Permit for public review and comment. The National Marine Fisheries Service (NMFS) offers the following comments on the proposed permit reissuance pursuant to our role as providers of biological and technical assistance under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (ESA) and the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*). We are sending these comments to you because of EPA's acknowledged oversight role in the issuance of this permit under Section 402(d) of the Clean Water Act (CWA), and acknowledged responsibility to comply with Section 7(a)(2) of the Endangered Species Act (ESA). In addition, these comments are provided per the processes outlined in the Memorandum of Agreement between the EPA and the NMFS regarding enhanced coordination under the CWA and ESA (hereafter "MOA") (May 22, 2001, 66FR 11202-11217).

With the CWA authority delegated from the EPA, Ecology proposes to reissue the Boatyard General Permit to 78 boatyards in Western Washington State, replacing the current permit.



The permit uses the concept of benchmarks and action levels (levels of contaminants that will require the permittee to take further actions) to show permit compliance rather than requiring compliance with State water quality standards.

The geographic area covered by the permit overlaps the range of seven federally-listed threatened salmon and steelhead, (as well as three threatened or endangered rockfish species, and the endangered southern resident Killer Whale), and designated critical habitat for five salmon and steelhead populations. The permit area overlaps areas addressed by the Puget Sound Shared Strategy Recovery Plans, Lower Columbia River Fish Recovery Board, the Governor's Salmon Plan, and the Puget Sound Partnership. Most of these plans have identified stormwater runoff as a significant factor in reaching salmon recovery. In addition, the Puget Sound Partnership has developed recommendations for addressing stormwater effects with the goal of achieving a healthy Puget Sound by the year 2020. Also, a recent report supported by your agency, identified stormwater runoff as the greatest contributor of the worst pollutants in Puget Sound (Hart Crowser, Inc. et al. 2007).

We support Ecology's objectives in permitting boatyard activities, which can include pressure-washing hulls, painting and coating, repair and replacement of engine and propulsion systems, hull repair, bilge cleaning, fuel and lubrication system repair and replacement, welding and grinding of hulls, buffing and waxing, and repair and replacement of marine sanitations. With the potential toxic discharge from a large number of boatyard facilities, we had hoped that this permit would significantly reduce the discharge of contaminated stormwater into receiving waters, thus providing additional protection for aquatic species including listed salmon. However in our review of the draft permit we are not assured that water quality will be improved to help meet the goals described above or meet minimum conditions for protecting listed salmon. We have identified several main issues that contribute to this concern:

- 1) the copper and zinc benchmark levels,
- 2) the frequency and location of required monitoring,
- 3) the relationship of benchmarks to water quality standards,
- 4) the use of dilution factors and mixing zones, and
- 5) implementation of remedial actions.

Copper and Zinc Benchmarks

We have identified in the past our concerns about copper and zinc levels allowed by other Ecology permits. Under this permit, boatyards would be allowed to discharge more copper and zinc than allowed under Ecology's Industrial Stormwater Permit. Adverse effects of dissolved copper on listed salmon occur at very low levels (values ranging from 0.18 to 2.1 µg/L in freshwater (Hecht et. al, 2007). In marine waters, acute effects from copper occur to aquatic species at 4.8 µg/L. Adverse effects of copper include disruptions to salmonid smoltification processes, interference with fish sensory systems,

and important behaviors that underlie predator avoidance, juvenile growth, and migratory success.

The draft permit proposes a generous maximum daily copper benchmark of 147 µg/L, and a seasonal average benchmark of 50 µg/L for discharges to lakes, rivers, and marine waters. For river and marine waters discharges, this is an improvement over the current permit which allows a 384 µg/L benchmark for discharges to rivers and a 229 µg/L benchmark for discharges to marine waters. However, this proposed benchmark does not go nearly far enough, it is more than a threefold increase of the current copper benchmark of 38 µg/L for discharges to lakes. More importantly, adverse effects to listed salmonids occur at copper levels that are approximately 30 (in marine waters) to 815 (in freshwaters) times lower than the proposed maximum daily benchmark level for copper (147 µg/L). Therefore, we do not believe more than minor detrimental effects to listed salmon and steelhead will be avoided.

Adverse effects of dissolved zinc also occur to listed salmon at very low levels - 5.6 µg/L in freshwater (Sprague 1968). In marine waters, acute effects from zinc occur to aquatic species at 90 µg/L. Adverse effects of zinc include altered behavior, blood and serum chemistry, impaired reproduction, and reduced growth.

The draft permit proposes a maximum daily zinc benchmark of 90 µg/L and a seasonal average benchmark of 85 µg/L for discharges to lakes, rivers, and marine waters. Adverse effects to listed salmon in freshwater occur at zinc levels that are 16 times lower than the proposed benchmark level for zinc (90 µg/L). In marine waters, adverse effects to listed salmon occur at the benchmark level. While this is much closer to being an effective benchmark level, by the time monitoring shows an exceedence of the benchmark and corrective action is taken, adverse effects have already occurred to salmon in these receiving waters for an extended period of time (up to 1 year or more). If one of the intended purposes of this permit is to avoid effects to listed salmon and other beneficial uses, benchmarks should be set below levels where adverse effects to species occur, so that remedial actions can take place before species are adversely affected. As such, we do not believe these proposed benchmark levels avoid more than minor detrimental effects to listed salmon and steelhead.

Frequency and Location of Required Monitoring

Monitoring per the draft permit is required to take place five times per year (four samples during the spring and fall and one during January). Given the high levels of copper and zinc that are expected to occur at these facilities, the frequent fluctuations in stormwater runoff and first flush events that occur throughout a year, the presence of listed salmon in the vicinity of boatyards, and the enormous volume of pollutants that reach Puget Sound and Western Washington waterbodies, a monthly monitoring requirement would give a more accurate account of copper and zinc discharges. The sampling requirements should also include collecting the sample within the first 30 minutes of a measurable storm event, with at least a 24-hour dry period prior to sampling. As well, the permit should specify that all discharge locations should be sampled unless discharges are substantially

identical. Once the documentation showing identical discharges is provided to Ecology, representative discharges can be selected for sampling.

Relationship of Benchmarks to Water Quality Standards

The benchmarks in the proposed permit are technology-based, (based on treatment methods available) and allow a higher benchmark level, instead of being water-quality based, (requiring conformance with surface water quality standards) and requiring a lower benchmark level. Federal and State regulations require that the more stringent of these two limits must be chosen for the parameter of concern. In addition, the limits based on water quality criteria have been increased by using additional factors such as a risk based model and dilution factors. We cannot accurately assume that a dilution factor of 5 will always be provided where listed salmon are present. Furthermore, since we have not consulted on the water quality standards for these metals, we cannot accurately assume that a certain level of risk of exceeding applicable water quality standards will not have adverse effects on listed fish. Therefore we believe that the permit should use limits based on water quality criteria with the only additional factor being the translator factor (to transfer from total to dissolved metal levels).

Use of Dilution Factors and Mixing Zones

In this permit, Ecology proposes to allow mixing zones to all permittees of 20 feet into the receiving water or the distance necessary to achieve a dilution factor of 20 if this is a lesser distance. Within this zone permittees can exceed water quality standards as long as water quality standards are met outside the mixing zone. However, no sampling is required to determine if water quality standards are being met. Even if permittees are meeting the benchmark levels for copper and zinc, this is no guarantee that water quality standards are being met, as the benchmarks are several times higher than the water quality standards (except for the zinc benchmark in marine waters). The allowance of a mixing zone should be determined on a case-by-case basis, considering such criteria as the level of existing pollutants in the receiving water (as combinations of pollutants below water quality standards can have adverse effects on salmonids), the presence of listed salmon and critical habitat, and whether the required sampling could accurately identify excursions of water quality standards.

Implementation of Remedial Actions

In this permit, three levels of adaptive management are described for responding to monitoring values which exceed benchmarks. However, action at each level fails to require implementation of remedial actions that would minimize the discharge of pollutants. There is no requirement that permittees actually achieve the benchmark levels through implementation of enhanced BMPs, so excursions of the benchmarks can continue indefinitely. Implementation of remedial actions at levels 1, 2, and 3 should require permittees to continue implementing remedial actions until the acceptable benchmarks are achieved. Level 2 actions should be required to occur according to an implementation schedule for prioritized treatment practices as specified in the Level 2

Source Control Report. At Level 3 Ecology must approve or disapprove an engineering report and specify follow-up actions. If the implementation of all the BMPs and remedial actions fail to achieve the applicable and acceptable benchmarks, Ecology must require additional site specific conditions under the general permit, and/or require the boatyard to obtain an individual permit.

In conclusion, based on the above factors, NMFS finds that the draft boatyard permit as currently written will have more than minor detrimental effects to listed salmon and steelhead and designated critical habitat in the Western Washington permit area. It is our understanding that EPA can use their authority under Section 402(d) of the Clean Water Act to object to a State permit where that permit would not comply with State water quality standards that are necessary to protect threatened and endangered species. As such, we encourage the EPA to object to the issuance of this permit.

We thank you for the opportunity to provide these comments under the process identified in the MOA. We look forward to continued coordination with EPA and Ecology on NPDES permits in Washington State, in part to meet the needs of listed salmon. Please call me at (360) 753-6054 if you would like to discuss this issue further.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Landino", with a stylized flourish at the end.

Steven W. Landino
Washington State Director
for Habitat Conservation

cc: Ted Sturdevant, Ecology
Ken Berg, USFWS

References:

Hart Crowser, Inc. 2007. Control of Toxic Chemicals in Puget Sound. Phase 1: Initial Estimate of Loadings. Prepared for Washington State Department of Ecology, U.S. Environmental Protection Agency, and Puget Sound Partnership. Publication No. 07-10-079.

Hecht, S.A., D.H. Baldwin, C.A. Mebane, T. Hawkes, S.J. Gross, and N.L. Scholz. 2007. An Overview of sensory effects on juvenile salmonids exposed to dissolved copper: Applying a benchmark concentration approach to evaluate sublethal neuro behavioral toxicity. U.S. Dept. Commer., NOAA Tech. Memo. NMFS-NWFSC-83, 39p.

Sprague, J. B. 1968. Avoidance reactions of rainbow trout to zinc sulphate solutions. Water Research Pergamon Press. Vol 2, pp. 367-372.



Association
of Washington
Business

Washington State's Chamber of Commerce

May 28, 2010

Mr. Gary Bailey
Department of Ecology
PO Box 47600
Olympia, WA 98506-7600
(submitted electronically to: gary.bailey@ecy.wa.gov)

Subject: AWB Comments - 2010 Draft Boatyard General Permit

Dear Mr. Bailey,

The Association of Washington Business (AWB) appreciates the opportunity to provide written comments regarding the Washington Department of Ecology's draft Boatyard General Permit (BGP) dated April 21, 2010. In addition to the following general comments, AWB supports more detailed comments submitted by the Northwest Marine Trade Association and their members.

AWB represents over 7000 businesses in the state of Washington, many of whom operate under an NPDES permit, including approximately 40 businesses that are required to comply with the provisions of the BGP. AWB and member organizations have worked collaboratively with Ecology on numerous stormwater and other water quality related efforts, in an attempt to craft workable permits. While AWB recognizes that the boatyard permit has been the subject of extensive litigation, and that certain provisions contained in this draft permit are the result of the settlement agreement among parties to the appeals, we suggest that the department and all parties need to revisit the basis for a good general permit, as outlined years ago by Ecology senior staff, as follows:

ASSOCIATION OF WASHINGTON BUSINESS

Membership Government Affairs Member Services AWB Institute

T 360.943.1600 ✉ PO Box 658, Olympia, WA 98507-0658
T 800.521.9325 🏠 1414 Cherry St. SE, Olympia
F 360.943.5811 www.awb.org

A stormwater general permit must be:

- 1) Effective in managing stormwater discharges to achieve the water quality goals for the receiving waters. “Effectiveness” includes an understanding of the impact on the receiving water from the discharge, followed by a determination of what improvements in the receiving water occur from the adaptive management actions implemented by the permittee. To this end, Ecology needs to better characterize the discharge and receiving water conditions in determining both general benchmarks and any water quality based specific limits.
- 2) Efficient for both the permittee and Ecology to implement. The draft BGP struggles to provide an efficient path for the permittee to comply. It is a complex document with multiple ill-defined and sometimes conflicting requirements. The use of realistic technology is laudable, provided it recognizes that not every facility can “reasonably” implement these technologies for reasons of space, cost, effluent differences or receiving water concerns.
- 3) Enforceable, whereby the permit has sufficient standards, guidelines or conditions that both the permittee and Ecology inspectors can recognize when the permittee is in compliance, while providing flexibility to adapt to local conditions. The proposed BGP is such a mix of requirements that it will be difficult to discern when a permittee is in compliance without specific direction from Ecology. The permit also increases the likelihood of citizen suites over “paperwork” technicalities, unrelated to improving the environment.
- 4) Simple to understand and implement. Those trying to implement this permit must be able to interpret its provisions and make decisions on how to achieve the intended purpose of each section. In this regard the draft BGP needs serious rework to shorten, simplify and minimize the non-value added “shall” and “will” provisions.

The above goals are critically important for Ecology to achieve in writing this permit, especially given our current economic challenges, competition for scarce state

resources and the rampant number of citizen suits that continue to plague the regulated community.

AWB would remind Ecology and others reviewing the draft permit and comments, that this permit sets limits for copper, zinc and lead in the parts per billion; an amount incredibly miniscule on its own, let alone compared to the far greater impacts to water quality from other sources. At some point, we should be compelled to collectively ask ourselves whether we've lost sight of improving water quality through reasonable and effective means, or whether we have become so focused on implementing ever restrictive lower limits for the sake of reducing numeric values on paper.

Benchmarks

The boatyard industry generally agreed to install advanced filter treatment systems or attain the same level of water quality that can be attained by those systems. Several boatyards have already installed and are operating advanced treatment for copper in their stormwater discharges. The monitoring data from a 2008 pilot study and from the boatyards that have installed the treatment technology supports the proposed copper benchmarks. It is appropriate for Ecology to base benchmarks on what the advanced treatment technology can reasonably achieve and to support the commitment by the industry to improve water quality by granting a mixing zone in the compliance with standards and conditions in the permit.

This permit scheme however, would not be consistent with the requirements of RCW 90.48.555 applicable to the Industrial Stormwater General Permit (ISGP) where compliance with narrative water quality standards includes facilities implementing best management practices approved in Ecology stormwater management manuals. The advanced stormwater treatment systems are not approved as part of the stormwater manuals and would not be considered "AKART" (All Known, Available, and Reasonable methods of prevention, control, and Treatment).

The permit scheme is appropriate, however, in the context of an industry specific sector that is not covered under the ISGP (and therefore subject to RCW 90.48.555). The permit is an example of how Ecology should adapt to information and knowledge gained from implementing the ISGP. Where Ecology determines that implementing best management practices is not sufficient to meet water quality

standards, the permit scheme in the draft BGP is an important regulatory tool to implement the provisions of 90.48.555 (10) concerning the development of "an alternative general permit" to impose more rigorous requirements on a permittee or industry sector for which the department has made a determination of reasonable potential to cause or contribute to the violation of an applicable water quality standard.

Economic Hardship Provision

AWB commends the department for including the concept of an "economic hardship provision", as provided in S8 of the draft BGP (page 27). However, as drafted, it is doubtful that any permittee will choose this option, as the limits for achieving water quality standards are much more stringent compared to the benchmarks provided to those permittees who have installed advanced filter treatment systems. The logic provided by Ecology regarding the lower limits under the hardship provision, is that the department, "believes that in four years of use, the media improvements and operational improvements will give performance equivalent to that achieved during the pilot test" (*email from Ecology staff, May 26, 2010*).

Setting a numeric water quality effluent limit based on a "belief" that technology will be available to consistently enable permittees to meet these extremely low numeric values is not much better than wishful thinking, as there has been no demonstrated large-scale technology that can guarantee these numeric values can consistently be achieved. In addition, these exceptionally low limits will invariably increase opportunities for Ecology and citizen enforcement.

Sincerely,



Grant Nelson
Government Affairs Director



P.O. Box 1180 • Port Townsend, Washington 98368-4624

Administration: (360) 385-0656

Operations: (360) 385-2355

Fax: (360) 385-3988

Washington State Department of Ecology
Attn: Gary Bailey
P.O. Box 47600
Olympia, WA 98504-7600

Subject: Boatyard General Permit

Dear Mr. Bailey,

We appreciate the opportunity to comment on the updated Boatyard General Permit, National Pollutant Discharge Elimination System (NPDES) Permit No. WAG-030000.

The Port of Port Townsend operates the largest public boatyard in the State. As we have stated in previous comment letters, our yard, as do many others around the State, form a catalyst which has allowed our community's identity to be created. Our last economic survey showed that a dollar spent in the yard, with our marine trades industry, generated an additional \$1.50 elsewhere in the community. Over 400 direct marine-related jobs depend on the yard operations and another 600 jobs are indirectly impacted. These numbers may not be great by Seattle standards but for Jefferson County, with a population of only 26,000, it is huge - the marine industry is the largest economic sector in our community.

There are a number of comments we wish to make:

1. We are encouraged that Department of Ecology (DOE) has recognized that the measures of copper, lead and zinc should be "benchmarks".
2. It remains to be seen if the new lower numbers can be attained through best management practices and the application of new technologies. Here in our yard we are in the process of installing 2 each, Stormwater RX Systems. They should be in by September 2010. It will take a full year of weather events and the full cycle of boatyard activity, with regular monitoring, to determine if the systems can reach the new stated benchmarks. Your office will be kept informed of our monitoring results as we received a grant from DOE to help purchase these systems. Even with the grant of \$370K we will expend another \$150K for the installation, continued monitoring and maintenance during the first year. There will be additional annual maintenance costs each year thereafter.

3. Number 2 above brings up the next concern. The new permit needs to remain in place for at least 5 years so these new technologies can be adequately tested and we can recover some benefit from our investment. Boatyards, public and private, simply cannot afford the continued financial burden of such investments to stay compliant with ever changing benchmarks.

4. We are also encouraged that DOE has recognized the financial impact, especially on small financially stressed yards. This is especially important given the current economic situation which will probably linger for several years in the marine trade industry. However there is concern that the approach in the draft does more to hurt the very yards needing support. In reading the comment letter from the Washington Public Ports Association we see they have the same concern. We agree with their recommended "alternative approach" they outlined. Financially stressed yards should not be punished by being held to tougher standards than the rest of the industry.

5. We concur with the sampling criteria as shown on page 23 of the draft.

Washington State is a maritime state. Our collective economy depends on our ability to productively use our waterfront. However, that use must be done in an environmentally sensitive manner so this unique resource is protected for the future. We believe boatyards are leaders in the effort to meet the needed stewardship requirements. All parties must work together in a way that encourages compliance and allows boat owners to properly haul their vessels and do necessary work in an environmentally save manner.

Thank you again for the opportunity to provide these comments. If you have questions please feel free to contact me at (360) 385-0656 or by email: larry@portofpt.com.

Sincerely,



Larry Crockett
Executive Director

cc: Port Commission
Rep. Kevin Van de Wege
Sen. Jim Hargrove
Rogers Weed, Dept. of Commerce
Johan Hellman, WPPA



www.stormwaterx.com

122 Southeast 27th Avenue
Portland, OR 97214
(800) 680-3543

Mr. Gary Bailey
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

May 28, 2010

Re: NPDES General Permit No. WAG-030000

Dear Mr. Bailey,

Thank you for the opportunity to comment on Washington Department of Ecology's Draft Boatyard General Permit WAG-030000 ("Draft Permit"). As you know, StormwaterRx LLC is a leading purveyor of stormwater treatment technology for Washington boatyards. StormwaterRx is also a member of the Northwest Marine Trade Association; however, we offer these comments on our own behalf to address the Draft Permit's stormwater provisions.

I. Technology-Based Benchmarks Are Sensible

Perhaps the most important change represented by the Draft Permit is the new copper and zinc stormwater benchmarks. Draft Permit at S2.D.3. Because the purpose of benchmarks is to help permittees assess whether they are using the best available technology, it makes more sense to use technology-based benchmarks, as in the Draft Permit, rather than water quality-based benchmarks, as in the current permit. StormwaterRx finds the proposed benchmarks to be reasonable and achievable, provided boatyards use combinations of mandatory BMPs and treatment BMPs (enhanced filtration).

This is not to say that the boatyard permit should ignore water quality criteria. However, if Ecology finds it necessary to include water quality-based effluent limitations in the final permit, Ecology should retain the technology-based benchmarks to ensure facilities are implementing adequate BMPs. It is particularly important to provide a relatively simply way to measure BMP efficacy, such as benchmarks, because whether or not a facility implements adequate technology dictates whether or not the facility is eligible for a mixing zone. WAC 173-201A-400(2). Eligibility for a mixing zone (i.e. dilution factor) may in turn inform the applicable water quality-based effluent limit. In short, technology-based benchmarks are a useful permit component.

II. Ecology Should Identify Treatment Technology Guidance

The Draft Permit provides that “[p]ermittees who choose BMPs from approved stormwater control manuals do not have to demonstrate the technical basis for the BMPs” in their SWPPP Draft Permit at S9.A.3; see *also* S9.B.3. According to the definition section of the draft Permit, “Approved Stormwater Management Manuals’ means stormwater manuals produced by Ecology, or USEPA that contains best management practices (BMPs) appropriate for the discharges covered by this permit. Manuals produced by trade organizations may be approved if reviewed by Ecology and posted on the appropriate Ecology web site.” This provision is valuable and can save permittees time and money. However, Ecology should further specify the documents that constitute approved stormwater control manuals for boatyards. Ecology should specifically address the following:

- Sarah Wilson, Washington Dept. of Ecology, *Economic Impact Analysis AKART Analysis: Draft National Pollutant Discharge Elimination System (NPDES) Wastewater Discharge General Permit for Boatyards* (April 2010) <http://www.ecy.wa.gov/biblio/1010018.html> (discusses treatment BMPs including the StormwaterRx[®] Aquip[®] passive adsorptive filtration system);
- Dept. of Ecology, *Stormwater Management Manual for Western Washington* (Feb. 2005) (does not directly address which BMPs are appropriate for boatyards or industrial sites);
- Taylor Associates, Inc., *Boatyard Stormwater Treatment Technology Study* (March 2008) (discusses treatment BMPs including the StormwaterRx[®] Aquip[®] passive adsorptive filtration system); and
- Dept. of Ecology, *Sample Boatyard SWPPP* <http://www.ecy.wa.gov/programs/wq/permits/boatyard/moreinformation.html> (last visited May 20, 2010) (lists BMPs including treatment BMPs for implementation at boatyards).¹

III. Clarifying Areas to be Monitored Will Enable More Efficient Compliance

At many industrial sites, stormwater runoff from areas such as employee parking lots and sealed roofs is diverted and discharged separately from stormwater that contacts industrial activities. This practice can drastically reduce the volume of stormwater requiring treatment, thereby reducing the cost of compliance. However, this practice potentially creates another monitoring location, which adds costs. The Draft Permit seems to allow boatyards to discharge stormwater that is not affected by boatyard activities without analytical monitoring, see Draft Permit at 22 (S6), but this provision is unclear and merits more explanation. Specifically, permittees would benefit from (1) a definition of the areas Ecology considers unaffected by boatyard activity and (2) clarification on whether discharges from these areas must be sampled and tested, or whether describing non-industrial stormwater discharges in the SWPPP and visual monitoring are sufficient. For example, is runoff from an area within a covered facility where boats are stored but no other activity takes place, considered affected by boatyard activities? If not, may the facility divert and discharge that runoff through a separate outfall without analytical monitoring at that outfall?

¹ The sample SWPPP also lists specific technologies by brand name, but does not list the StormwaterRx Aquip. Ecology, *SWPPP for Boatyard Facilities* 14. Ecology should amend the sample SWPPP to include StormwaterRx's Aquip, as Ecology identified the Aquip Stormwater Filtration System as the most effective treatment BMP at the lowest cost. Wilson at 11.

Elsewhere, the Draft Permit suggests that enumerated non-stormwater discharges must be monitored for total copper and zinc. See Draft Permit at 22 (S5) and 31 (S9.B.1.e). It is unclear whether enumerated non-stormwater discharges that are uncontaminated and not affected by industrial activities must be monitored. See Draft Permit at 22 (S6). The final permit should clarify the potential conflict between the two provisions and enumerate any non-stormwater discharges the permittee does not need to analytically monitor.

IV. Ecology Should Remove the Hardship Variance

Ecology should remove the hardship certification provisions from the permit because it is ill-defined and the provisions serve neither the interests of small business nor Clean Water Act's environmental protection goals.

A. *The Hardship Variance Lacks Objective Criteria*

The only guidance the Draft Permit provides on obtaining a hardship variance is that the permittee submit a "signed certification that they are unable to fund the equipment necessary to meet the technology-based benchmarks." This single sentence is inadequate guidance for facilities seeking a variance and will certainly not provide Ecology enough information to make a legally defensible determination.² Specifically, a variance must be based on fundamentally different factors, and/or provide information to support a particular compliance schedule, as discussed *infra*, at §§ IV.C-D. If Ecology retains the hardship certification process in the final permit, we suggest it set forth certification criteria sufficient to support a variance and/or compliance schedule. See 40 CFR Part 125.31; WAC 173-226-180.

Ecology should also revisit the basis it uses (and allows permittees to use) to calculate the cost of equipment necessary to meet the technology-based benchmarks. Ecology must not, at least in the context of StormwaterRx equipment, rely on Arcadis's *Boatyard Stormwater Treatment Technology Cost Analysis* (June 27, 2008). StormwaterRx has repeatedly informed Ecology that based on end-user supplied costs for actual installations, the Arcadis study over-estimates the cost of the StormwaterRx Aquip. The report also uses infrastructure costs (e.g., paving, regarding, new drains) that are not representative of actual costs. See Barry Kellems, Principal Engineer, ARCADIS, Cost of Stormwater Treatment at Law Seminars International's Clean Water & Stormwater, Seattle Washington (April 8, 2010) (attached). Ecology's AKART analysis accompanying the Draft Permit provides more accurate cost estimates, primarily because it highlights the many variables that can affect costs. See, e.g., Wilson at 28. Hardship variance certifications should also not rely on cost estimates based on total boatyard acreage where there are significant areas that are not affected by boatyard activities, because this reduces the area requiring treatment and thus reduces the cost of treatment (see discussion, *supra* at § III).

Finally, if Ecology retains the hardship variance in the final permit, it should specify the process and deadlines in the event Ecology denies a hardship application. However, StormwaterRx maintains that the hardship provision does not serve economic or water quality interests and should not survive in the final permit.

² At the May 24, 2010 Draft Permit hearing in Lacey, Washington, Mr. Bailey stated that permittees must submit an engineering report with cost estimates along with the hardship certification. However, nothing in the Draft Permit makes this requirement evident. If Ecology intends to require an engineering report, the permit should incorporate S7.A.3(a)-(b) into S7.A.3(d).

B. The Hardship Variance Imposes Unreasonable Effluent Limits

The hardship variance curiously imposes more stringent effluent limits on facilities that certify that they cannot afford to meet less stringent benchmarks. A facility that obtains a hardship variance will have to immediately limit its discharge to 33 ug/L lead (daily maximum) and 10 ug/L lead (seasonal average), whereas non-hardship facilities will either have no applicable lead effluent limit or a much more liberal limit of 185 ug/L if they discharge to Lake Union/Ship Canal. The lead limitations will keep at least some facilities from applying for hardship certification – and allow problematic lead discharges to continue unnoticed. At the end of its compliance schedule, a hardship facility will then have to comply with copper effluent limits that are two to three times stricter than the benchmarks applicable to facilities that do not have an economic hardship. In other words, in exchange for a compliance schedule that is more lenient for copper and potentially longer, hardship facilities will have to comply with stricter lead limits during the compliance period than will other facilities and will have to ultimately comply with stricter copper effluent limits than will facilities that complete a standard Level 3 response.

To comply with the lower copper limits, facilities will likely need to install more expensive advanced treatment BMPs than facilities that never applied for an economic hardship variance. Even the extended compliance schedule is unlikely to enable facilities to afford yet more expensive equipment; instead it sets facilities up for failure at the end of the compliance schedule. This scheme makes little sense and will not be attractive to boatyard owners and operators. Imposing unreasonable and unachievable limits also threatens water quality, as there is little incentive for hardship facilities to make all feasible pollutant reductions if they will nonetheless be liable for violating effluent limits.

C. The Hardship Variance Does Not Comply With the Clean Water Act

The two-tiered structure of the Draft Permit's effluent limits – imposing technology-based limitations on boatyards that can afford treatment technology and water quality-based limitations on those that cannot – does not comport with the Clean Water Act as required by 33 U.S.C. § 1342(b). As relevant here, the Clean Water Act requires dischargers to implement best conventional pollutant control technology (BCT) if conventional pollutants are present and best available pollutant control technology (BAT) if toxic or non-conventional pollutants are present. 33 U.S.C. § 1311(a); 1311(b)(2)(A); 1311(b)(2)(E). Simultaneously, the Clean Water Act requires dischargers to meet water quality based effluent limits. 33 U.S.C. §§ 1311(a), 1312. Instead of requiring uniform compliance with technology-based effluent limitations (BCT/BAT) and water quality based effluent limitations, the Draft Permit impermissibly creates selective requirements with the hardship provision.

The Draft Permit sets forth technology-based benchmarks. These benchmarks are based on BCT/BAT (or AKART³) and in truth are technology-based effluent limits. See Washington Dept. of Ecology, *Fact Sheet for NPDES Boatyard General Permit Reissuance* 13 (April 21, 2010) (“Fact Sheet”) (“Ecology concluded in the 2005 permit that BMPs constituted BCT for stormwater discharges in the boatyard industry.”); *id* at 18 (“Benchmarks as used in this permit are effluent limits with a period of adaptive management.”). Presumptively, then, if a facility is not meeting benchmarks, it has not implemented BCT/BAT. Furthermore, the Draft Permit's interim effluent

³ See, e.g., Wilson at 21.

limits, Draft Permit at S8.B, clearly do not require BCT/BAT as they are based on the recent performance of the top 75% of boatyards *without* treatment. See Ecology, CuZnBMPperform.xls (2010). That the technology-based limits in the Draft Permit are not national effluent limits set by EPA is unimportant; Ecology's AKART and supporting determinations will make it impossible for a boatyard to prove, as a matter of fact, that it has implemented BCT/BAT if it is not meeting the benchmarks.

The Clean Water Act includes several provisions for variances from effluent limits and deadlines, however none of these provisions are available for or properly invoked by the Draft Permit. Section 301(c) of the Clean Water Act allows modification of the timetable for implementing BAT so long as the facility implements the maximum use of technology within the economic capability of the owner or operator which will result in further progress toward the elimination of the discharge of pollutants. 33 U.S.C. § 1311(c). The Draft Permit does not require hardship facilities to demonstrate the requirements of Section 301(c). Section 301(n) of the Act allows for a variance from effluent limits if the facility is fundamentally different with respect to specified factors (other than cost). 33 U.S.C. § 1311(n). See *also* 40 CFR Part 125.31; *Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1034 (D.C. Cir. 1978) ("states can only grant variances that conform to EPA's interpretation of its variance provision"). Nothing in the Draft Permit demands hardship facilities show that they meet the fundamentally different test. Variances from effluent limitations for toxic pollutants, such as copper, require either a showing of fundamentally different factors, 33 U.S.C. § 1311(l), or that there is no reasonable relationship between the costs and benefits of the facility's compliance with water quality-based toxics limits, 33 U.S.C. § 1312(2)(A). Because the hardship provision does not require this or any of the necessary showings, the provision violates the Clean Water Act. Accordingly, we request that Ecology strike the hardship provisions.

D. The Hardship Variance Does Not Comply With State Law

By allowing hardship boatyards up to five years of operation without implementing AKART, the Draft Permit creates a compliance schedule. Washington Administrative Code (WAC) sets forth compliance schedule requirements, including that "[s]chedules of compliance, shall set forth the shortest, reasonable period of time, to achieve the specified requirements, such period to be consistent with the guidelines and requirements of the [Clean Water Act]." WAC 173-226-180(2). Nothing in the Draft Permit requires Ecology or the permittee to specify the shortest period of time required to achieve the relevant effluent limits.

Department regulations further provide that:

In any case where the period of time for compliance specified in subsection (1)(a) of this section exceeds one year, a schedule of compliance shall be specified that will set forth interim requirements and the dates for their achievement; however, in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as construction of a treatment facility) is more than one year and is not readily divided into stages of completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement.

WAC 173-226-180(3).

The Draft Permit improperly defaults to an “Annual Progress Report” requirement, Draft Permit at S8.C, for hardship facilities without satisfying the requirements of WAC 173-226-180(3). First, the Draft Permit does not describe or require facilities to specify, what interim requirements for hardship facilities might be. This alone violates WAC 173-226-180(3). Interim deadlines and Department oversight are critical to guard against cost deferral and ensure that boatyards make adequate progress toward AKART. Second, nothing in the Draft Permit requires Ecology or facilities to certify that time necessary to complete any interim requirements exceeds one year.⁴ Steps toward compliance might include setting aside a certain amount of money each quarter or installing drainage infrastructure during the construction season. Unless the facility shows that the interim step will take over one year and is not readily divided into sub-stages of completion, Department regulation require dates by which the facility must achieve interim steps. We suggest clarification to ensure any compliance schedule for hardship facilities complies with WAC 173-226-180.


Another way of looking at the hardship variance is that it allows boatyards that have not implemented AKART to violate water-quality standards through the use of mixing zones. Ecology’s regulations explicitly require discharges to fully implement AKART before permitting a mixing zone. WAC 173-201A-400(2). In 2005, the PCHB specifically concluded that mixing zones are not allowed for boatyards that are not meeting AKART. Even so, the Draft Permit compliance period effluent limitations for hardship facilities, (i.e. those that do not have AKART) are much higher than water quality criteria. Draft Permit at S8.B. Whether the effluent limits are based on a dilution factor, a mixing zone calculation or sub-par performance data, the result is the same – the effluent limits violate water quality criteria. Only once a facility implements AKART may Ecology permit a mixing zone. This is another reason to remove the problematic hardship variance from the final permit.

V. Conclusion

Overall, the Draft Permit presents an opportunity for increased compliance and improved water quality in Washington because it sets forth technology-based benchmarks. The clarifications to the Draft Permit and accompanying materials StormwaterRx suggested herein will help boatyards implement BCT/BAT more efficiently. The only significant change StormwaterRx would like to see in the final permit is deletion of the hardship certification provision, which does nothing other than make the permit vulnerable to legal challenges, such as those that have plagued the history of the boatyard permit.

Thank you for the opportunity to comment. StormwaterRx looks forward to Ecology’s Response to Comments.

Sincerely,



Claire Tonry, Esq.
Legal Analyst, StormwaterRx LLC

⁴ The Draft Permit does require some hardship facilities to “define the period of time required to fund a system” but this appears to apply only to boatyards with Level Three Responses required at the time the new permit issues, see Draft Permit at S7.B, and in any event does not ask permittees to detail interim steps.

Costs Summary

Additional considerations

Operational and structural BMPs can be implemented in order to lower cost of treatment.

- Removing portions of the site from industrial contact with rainfall or surface runoff.

Costs did not include tax, monitoring, additional treatment requirements due to high pollutant loads, additional site improvement costs for improved drainage and collection or unknown obstacles.

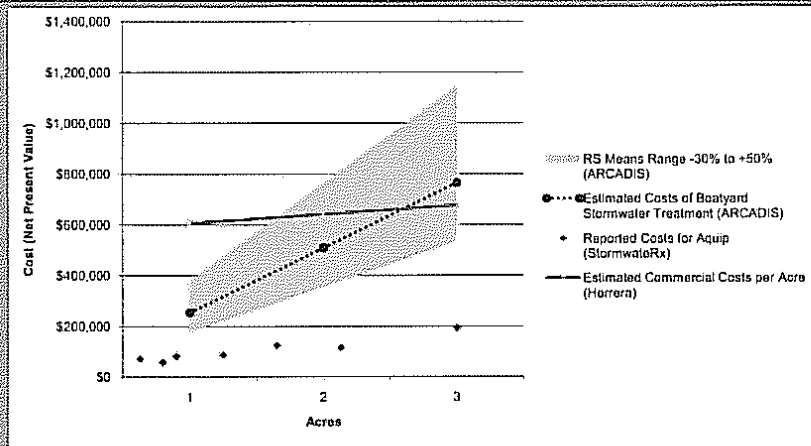


Per Acre Cost Comparison with Actual AQUIP Costs

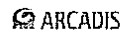
Parameter	Average Actual Costs (AQUIP)	Cost Estimate
Treatment Cost	\$45,700	\$46,000
Drainage Cost	Not Required	\$131,000
Capital Costs (Year 0)	\$45,700	\$177,000
Annual O&M Cost (Year 1-15)	\$3,500	\$8,500
Present Value of O&M	\$31,600	\$78,000
Net Present Value per acre (Without Drainage) (-30%)	\$77,300	\$255,000 (\$110,000) (\$77,000)



Costs Summary Comparison of costs



Note: Net Present Value calculated for all estimated costs





May 28, 2010

Gary Bailey
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504
Via email: gary.bailey@ecy.wa.gov

RE: Comments on Draft Boatyard General NPDES Stormwater Permit (Permit No. WAG-030000)

Dear Gary,

We are writing to comment on the Draft Boatyard General NPDES Stormwater Permit, which covers about 88 boatyards at this time.

People For Puget Sound is a nonprofit, citizens' organization whose mission is to protect and restore Puget Sound and the Northwest Straits.

We support the Puget Soundkeeper Alliance comments including lack of adherence to the Pollution Control Hearings Board rulings, violating antibacksliding policy, lack of water quality standards for all facilities, use of standard mixing zones, and inadequate sampling. We have the following additional comments:

- **Sediment monitoring within stormwater drain system.** The one-time monitoring (2012) should include an EPA priority pollutant scan of sediment in the stormdrain lines. It is important to know if there are chemicals of concern that are not being adequately addressed or are previously not expected at these facilities. The level of toxic chemicals in the sediment is a better determination of toxic loading than water column sampling (Table 6 of the Fact Sheet).
- **Sediment monitoring at outfalls.** Sediment monitoring should be required in the areas around the outfalls for these facilities given the high levels of pollutants in the runoff.

Thank you for your consideration. You can reach me at (206) 382-7007 if you have any questions or concerns.

Sincerely,

Heather Trim
Urban Bays and Toxics Program Manager

MAIN OFFICE	NORTH SOUND	SOUTH SOUND
911 Western Avenue, Suite 580 Seattle, WA 98104 tel • 206.382.7007 fax • 206.382.7006 email • people@pugetsound.org	407 Main Street, Suite 201 Mount Vernon, WA 98273 tel • 360.336.1931 fax • 360.336.5422 email • northsound@pugetsound.org	120 East Union Avenue, Suite 204 Olympia, WA 98501 tel • 360.754.9177 fax • 360.534.9371 email • southsound@pugetsound.org



JUN 02 2010

WATER QUALITY PROGRAM

May 28, 2010

Gary Bailey
Washington State Dept. of Ecology
Water Quality Program
P.O. Box 47600
Olympia WA 98504-7600

RE: Draft Boatyard General NPDES Permit – April 21, 2010

Dear Mr. Bailey:

The purpose of this letter is to provide comments from the Port of Seattle on the Draft Boatyard General NPDES Stormwater Permit (the "Permit").

The Port support the efforts to improve the Permit and its implementation put forth in this draft. Improvement to stormwater discharges and the associated protection of waters of the State is a critical goal for Washington's ports. However, environmental regulations have the potential to create significant economic impact to businesses if they are technically or economically unattainable.

Comment #1: Technology-based limits verse Water Quality-base limits
Background

It appears that Ecology has taken a logical and reasoned approach in setting technology-based limitations for stormwater discharges. Using the actual results of stormwater chemical data from boatyards that have installed multimedia filtration stormwater treatment devices and the data from the Boatyard pilot test to derive new benchmarks provides predictability to businesses and helps identify specific treatment technology that will actually work. At the same time using tested technologies gives regulators explicit knowledge of what environmental improvements are expected from deployment of a proposed treatment technology while making significant progress toward environmental improvement. Because these tested technology-based limitations are developed on a case-by-case basis (40 CFR 125.3, and Chapter 173-220 WAC) they would satisfy the requirements for AKART.

For many years, stormwater treatment manufactures have been striving to create affordable and implementable technologies that would have achieve lower limits than what are proposed in this current draft of the permit. A technology has yet to be invented that can consistently attain lower limits such as those set in the Industrial General Permit, for example.

Boatyards have significantly reduced the copper and other pollutants from their sites. Creating unachievable limits for these boatyards would open the door to more boat maintenance being conducted in uncontrolled environments because of expense or lack of access to boatyard if many are driven out business. This would represent a significant step backwards for water quality.

The Port also applauds the continued use of technology-based standards that can be modified via the follow statement in the permit:

Ecology may modify this permit to raise these benchmarks during the term of this permit if the long term average for the treatment is demonstrated to be higher than used to calculate these limits.

This is also critical to business regulated under this permit to make progress toward environmental improvement without being burdened by unreasonable regulation.

Comment/Proposal

None

Comment/Proposal Intent

Technology-based standards derived from actual results to drive permit actions make sense from an environmental as well as a business perspective. In an extremely competitive market, technologies that can achieve lower limits haven't materialized in spite of the need. Setting limits based on current technologies facilitates permit compliance while working to reduce pollutants. Not raising the bar beyond achievability is important in ensuring that boat owners don't end up doing work currently being performed by the boatyards in inappropriate places.

**Comment #2: S8. CONDITIONS APPLICABLE TO FACILITIES RECEIVING A
HARDSHIP CERTIFICATION**

Background

The conditions of S8. would potentially guarantee that no one will certify as having a hardship because of the extra burden of **significantly lower effluent** limits. Both the significantly lower limits and use of effluent limits (as opposed to benchmarks limits) are problematic.

There appear to be a number of problems that Ecology is attempting to resolve with this approach:

1. Ecology resources are not sufficient to provide assurance that boatyards facing hardship are progressing and improving their discharges until treatment can be afforded.
2. Some environmental groups feel that technology should already be installed. Allowing hardship will only delay what they feel should have already been done.
3. Some boatyards cannot currently afford treatment. Installing treatment would cause their business to fail.

The following is an attempt to propose an alternative solution to what Ecology has proposed in the Draft Permit.

Comment/Proposal

1. Remove the effluent limit requirement.
2. Have the technology based benchmarks apply to all (regardless of hardship).
3. Submit a Hardship Certification. If granted, the boatyard is required to complete the following:

- a. **Compliance Schedule** - Submit a compliance schedule for implementing additional bmps above mandatory and a schedule for implementing treatment.
- b. **Certified Financial Plan** - Submit a financial plan to ecology that certifies via financial backing the purchase of the equipment within the compliance schedule time line. This financial plan must show that the boatyard will be able to achieve the install of treatment within the time designated by the compliance schedule. This plan must also demonstrate the financial backing of loans, grants or other financial mechanisms to provide funds for the compliance schedule components.
- c. **6 Month Ecology Inspector** - Include in the financial plan a payment to a designated Ecology inspection every six months to ensure:
 - i. Mandatory BMP implementation
 - ii. Compliance Schedule milestone achievement
 - iii. Financial Schedule milestone achievement
 - iv. A six months review of the facility to demonstrate progress toward reducing water quality impacts. (they'd need to show progress every 6 months)

This payment should be sufficient to pay for a boatyard hardship designated ecology inspector, but not be too big so as to impede purchase of treatment equipment (\$ 2,500 perhaps). Once treatment is installed, the paid for

Ecology inspections would continue for a period of one year to ensure the initial treatment installation and implementation was moving smoothly.

The financial plan and paid-for Ecology inspections would help identify progress toward the reduction in pollutants and help to ensure that the boatyard was making progress toward the installation of treatment.

Comment/Proposal Intent

This would prevent all boatyards from simply declaring hardship just to buy time, but would provide additional time for boatyards that would be put out of business by an immediately install treatment mandate.

Ecology resources made available via a pay system to the boatyards to keep focus and demonstrate progress while working toward installation.

A compliance schedule/financial plan would provide a path to achieve compliance.

Comment #3: Maximum Daily Limit and Seasonal Average Limit

Background

"Daily Discharge" means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for the purposes of sampling. For pollutants with limitations expressed as concentration, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

"Seasonal Average" means the average of values reported on the monthly discharge monitoring reports from the period of October through May of each year.

Stormwater Sampling requirement – Consistent Location - One sample in October, November, January, April and May

S10. D. Additional Monitoring by the Permittee

If the Permittee monitors any pollutant identified in this permit more frequently than required by this permit using test procedures specified by Condition S3.C of this permit, then it must include the results of this monitoring in the calculation and the data submitted in the Permittee's DMR.

Comment/Proposal

There is a requirement to sample only once during October, November, January, April and May. Based on the one sample, corrective action will be determined. Four samples above benchmarks require structural or treatment practices.

It is unclear, if additional sampling information can be used as part of the determination of corrective actions. It seems that actions with follow up sampling to determine the effectiveness of an action would want to be encouraged.

Permittees who sample more than once per month should be allowed average the sample results for each parameter and compare the average value to the benchmark to determine if the discharge has exceeded a benchmark. The permit implies that averaging can be done if samples are taken daily but not if more are taken during the month.

Comment/Proposal Intent

Amend the permit to allow the establishment sampling that would allow averaging to more effectively and accurately characterize pollutant discharge, an operator may choose to monitor more than the prescribed 6 times/year.

Comment #4 Topside Cleaning in the Factsheet Page 5:

Background

A boatyard, as defined for purposes of this permit, is a service business primarily engaged in new construction and repair of small vessels 65 feet or less in length. Services provided may include, but are not limited to: pressure washing; bottom and top side painting; engine, prop, shaft, and rudder repair and replacement; hull repair, joinery, bilge cleaning; fuel and lubrication system repair or replacement; welding and grinding on the hull; buffing and waxing; **top-side cleaning**; MSD (marine sanitation device) repair or replacement, and other activities necessary to maintain a vessel.

Those boat repair activities, whether conducted by the vessel's owner or by an agent or contractor hired by the owner, which do not require coverage under this permit include the following:

- Engine repair or maintenance conducted within the engine space without vessel haul-out.
- **Topsides cleaning**, detailing and bright work.

Comment/Proposal

References to topside cleaning seem to conflict in the factsheet. Eliminate the reference to top-side cleaning in the boatyard definition paragraph as done in the permit.

Comment/Proposal Intent

Clarification.

Thank you for this opportunity to comment on the Boatyard Permit. If you have any questions concerning the contents of this letter, please contact Marilyn Guthrie for the Port of Seattle (206) 787-3347.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marilyn Guthrie', with a stylized flourish at the end.

Marilyn Guthrie
Stormwater Program Manager
Pier 69 - 2711 Alaskan Way
Seattle, WA 98121
Phone: (206) 787-3378
Fax: (206) 728-3707
guthrie.m@portseattle.org

cc:

WPPA – Johan Hellman

Let the record show that it is 1:54 PM on May 24, 2010 and this public hearing is being held at Ecology building headquarters located at 300 Desmond Dr., Lacey, WA. The primary purpose of this hearing is to receive free public comments regarding issuance of the boatyard general permit. Notice of this public hearing was published in the Washington State Register, issue number 10-08-090, on April 7, 2010. Ecology also directly notified boatyard permit holders and posted the announcement on the boatyard website and on Ecology public events calendar.

Okay, when I call your name would you please come here, have a seat, be comfortable, give your name, address, and who you are representing, and provide your comments for the record right here into the tape recorder. We can begin. And the first person is Bob Beckman.

My name is Bob Beckman and I am the Executive Director of Puget SoundKeeper Alliance. Our business address is 5305 Shilshole Avenue NW, Suite 150, Seattle, 98107.

We've submitted detailed comments already, but I want to give you just a quick summary. We believe that the draft permit avoids imposing water quality protections of the water act on boatyards which do discharge some of the highest recorded stormwater copper concentrations on record and have generally a poor history of permit compliance. This draft permit ignores mandates of the pollution control hearing board that a colleague of mine will address in a moment. This draft permit ignores settlement agreements between the Puget SoundKeeper Alliance, Northwest Marine Trade Association, and the Washington State Department of Ecology. This draft permit represents backsliding in violation of the clean water act. This draft permit violates the anti-degradation policy. And this draft permit ignores achievements of early adopters of effective storm water treatment, and doesn't level the business playing field for those boatyards that are playing by the rules.

We believe all stormwater discharges should be subject to numeric water quality based effluent limitations. Boatyard stormwater has a reasonable potential to cause or contribute to violations of water quality standards, particular for copper, and the federal law requires that the inclusion of water quality effluent limitations in such circumstances. Water quality effluent limitations must be numeric unless numeric limitations would be unfeasible. And we can see no reason that numeric water quality based limits are infeasible. The draft permit does include water quality based effluent limits for copper, zinc, and lead for facilities receiving a hardship certificate -- why not for all permittees? The draft permit ignores the draft settlement language on benchmarks, sampling frequency, and other issues. Puget SoundKeeper alliance, Northwest Marine Trade Association and Washington State Department of Ecology signed a settlement agreement in 2007, and this draft permit ignores all the significant points of agreement in this settlement. The copper benchmarks in the settlement draft permit would be 29 ppb maximum daily limit of copper and 14.7 ppb as a seasonal average. The lead effluent limitations for Lake Union and the Ship Canal were to be 55.6 ppb maximum daily limit. And stormwater sampling was to occur monthly. The draft permit proposes a copper benchmark of 147 ppb for fresh and marine waters. That's the current draft, 2010 permit. And the draft permit proposes a lead effluent limit of 185 ppb. And the draft permit proposes only five samples per year.

We believe the draft permit benchmarks represent back sliding in violation of the Clean Water Act the draft permit proposes a total lead numeric water quality based effluent limit of 185 ppb which is more than three times the level of lead water quality based effluent limit in the current permit. The draft permit proposes a copper benchmark of 147 ppb for marine, freshwater and lakes with no consideration of the effects on salmonoid species. The current permit has a benchmark of 38 ppb to lakes, that's freshwater. The current industrial stormwater general permit has a copper benchmark of 14 ppb. How can Ecology justify a copper benchmark an order of magnitude higher than this draft permit than in the industrial stormwater general permit?

The current permit includes a numeric water quality based effluent limit for copper for new sources and new discharges to Lake Union and the Ship Canal, while the draft permit proposes no such limitation. The draft permit omits oil and grease and total suspended solids benchmarks and associated monitoring for all boatyard stormwater. Stormwater discharges should be subject to numeric water quality based effluent limits – limitations - for all permittees. The draft permit fails to comply with the requirements of anti-degradation policy. Ecology has not performed the analysis, developed the adaptive process or provided the public notice mandated by WAC Tier 2 anti-degradation protection. And finally the draft permit ignores achievements of early adopters of effective stormwater treatment. Relying on Ecology to keep the promise to issue a modified permit in 2008, several boat yards invested in effective stormwater treatment in 2009. Basically, the draft 2010 permit will allow any self-declared hardship case to continue to violate water quality standards for the duration of the new permit for five more years. Thank you.

Thank you. Kathy George?

I'm here as a volunteer for Puget SoundKeeper Alliance. Specifically, I'm a member of the litigation committee. And I am not a lawyer for the Puget Soundkeeper Alliance. But, I am a lawyer practicing environmental law and other types of administrative law, and I'm here to address an issue that really transcends the technical details of this permit and, as Mr. Beckman just said, we have submitted very detailed comments about the many ways in which we believe the draft permit is technically and substantively in violation of the relevant laws. But, I'm here to address the issue, specifically, of the non-compliance with the previous decision obtained by Puget Soundkeeper Alliance in litigation. As you know, the citizens in this state rely on the pollution control hearings board to enforce clean water laws when Ecology either can't or won't enforce those laws on its own. And, as has already been discussed by Mr. Bailey and Mr. Beckman, there was an order of the pollution control hearings board concerning an earlier iteration of this same permit. And, that order, which I have in front of me, included numerous findings regarding the ways in which the clean water laws were not being enforced. I'm not going into detail about what those findings were, but what I'm here to speak to is the fact that the draft boatyard permit once again violates clean water laws in the same ways that the hearings board already said needed to be fixed. And so what we have here is that we have a system of oversight which our tax dollars pay for being stripped of its meaning. Unless this permit is revised to comply with the prior order, Ecology's message to the people of this state who care about the health of Puget Sound is essentially this. You citizens are powerless. You can sue us, you can even win a lawsuit and you still can't get the clean water laws enforced. And I'm here to say that that cannot be the message if the enforcement system in our state is to have any meaning. A pollution control hearings board order must have meaning. And so on behalf of the Puget Soundkeeper Alliance, I ask Ecology to revise the draft permit in accordance with the PCHD order as explained in the materials we've already submitted. Thank you.

Okay. Thank you.

Okay. I don't have anybody else who's indicated when they signed in that they wanted to provide testimony, so I'm asking, is there anyone else out there who heads the comments they would like to make for the record? No? Okay.

All the testimony that was presented at the hearing we had today as well as the ones that we held Wednesday at Everett, and all of the written comments we receive, are part of the official record for this proposal, and whether it is oral or written testimony, it receives equal weight in the decision-making process.

The public comment period ends on May 28, 2010. Written comments must be received no later than 5:00 PM on the 28th. Please submit written comments to Gary Bailey, Department of Ecology, P.O. Box 47600, Olympia, WA 98504 -7600. Comments may be submitted via e-mail, and Gary's e-mail address is gary.bailey@ecy.wa.gov. E-mail comments must have the commenter's name and postal address. Comments may also be sent by fax to Gary and fax number is area code 360-407-6426. And, if you do choose to use the fax, please be very careful because my phone number is one digit off and it drives me crazy to hear that beep when I pick it up. All oral and written comments that are received during the public comment period will be responded to in a document called response to comments summary and that document will state Ecology's official position on a concerns and issues that have been raised during this process. The document will be automatically mailed out to everyone divided oral or written testimony and I'm also assuming that it will be posted on the webpage. Ecology is expecting to issue this permit sometime in October. It will become effective 31 days after the issuance, after it's been signed. If Ecology believes that comments received either in writing or in oral testimony could substantially change the scope or the conditions within the original draft permit, another public notice and draft and comment period may be necessary, which would result in a delay in issuing the permit coverage. The ultimate decision on whether or not this permit will be signed and issued will be made by the water quality program manager Kelly Susewind. On behalf of the Department of Ecology, thank you for attending our workshop and this very short public hearing. This hearing is adjourned at 2:08 PM.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
WATER AND WATERSHEDS

July 26, 2010

Mr. Kelly Susewind, P.E., P.G. Manager
Water Quality Program
Washington State Department of Ecology
Post Office Box 47696
Olympia, Washington 98504-7696

Dear Mr. Susewind:

The purpose of this letter is to provide U.S. Environmental Protection Agency Region 10's comments on the Washington Department of Ecology's (Ecology) April 21, 2010, draft Boatyard General Permit (Draft Permit). EPA received the Draft Permit on April 26, 2010, and is providing these comments consistent with the 1989 Amendment to the National System Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement between EPA and Ecology that allows EPA 90 days to comment on draft general permits.

EPA would first like to acknowledge the reduction of copper and other pollutants in stormwater runoff from boatyards that has been achieved over the past decade. As noted in the Draft Permit Fact Sheet, the median copper value has dropped from 410 ug/L in the 1998 to 2002 period to less than 100 ug/L in recent years. Although this is a positive trend and demonstrates that the Boatyard General Permit had been an effective tool in reducing stormwater impacts, additional improvement is still needed. Below are EPA's comments and recommendations regarding the Draft Permit.

EPA is concerned that the copper benchmark levels of 50 ug/L (seasonal average) and 147 ug/L (daily maximum) are insufficient to ensure that stormwater discharges from boatyards meet copper water quality standards and avoid or minimize adverse affects to salmon. The Draft Permit Fact Sheet states that these copper benchmarks are technology-based using data from the March 2008 pilot study and from a few boatyards that recently installed treatment systems. However, as discussed in S4 of the Draft Permit, boatyard discharges must also meet water quality standards. The Draft Permit Fact Sheet does not discuss how these copper benchmark levels serve to meet water quality standards. The Draft Permit does include numeric water quality-based copper effluent limits for those boatyards that cannot achieve the benchmarks and get a hardship certification. However, for those boatyards that can attain the copper benchmarks, there is no rationale in the Draft Permit that their discharges would be reasonably certain to attain the copper water standards. In fact, the water quality-based copper effluent limits included in the Draft Permit (e.g., 14 ug/L as seasonal average for marine discharges) indicate that the copper benchmarks would *not* be sufficient to meet the copper water quality standards.

EPA recognizes the recent litigation and settlements regarding the Boatyard General Permit. In light of this history, EPA recommends that the copper benchmarks that Ecology proposed in the November 8, 2008, modification of the Boatyard General Permit be used: 14 ug/L (seasonal average) and 29 ug/L (daily maximum). EPA views these copper benchmarks as an acceptable basis for compliance with the copper water quality standards as well as technologically achievable targets.

EPA understands that the boatyards that recently installed the treatment systems have yet to demonstrate attainment with these copper benchmarks (14 and 29 ug/L). But, Ecology in the Draft Permit Fact Sheet, believes that the performance will improve over time to meet the performance level of the 2008 pilot study (10 ug/L seasonal average). Thus, it is reasonable to include a 14 ug/L average benchmark to spur adaptive management to increase performance over time. Also, these benchmarks are reasonable considering that benchmarks are not enforceable numeric effluent limits. Thus, boatyards that install treatment and continue to make adjustments to improve performance would be in compliance with the permit even if they reported values that exceeded the benchmarks.

EPA recommends that a single set of copper benchmarks (i.e., 14 and 29 ug/L) be used for both marine and freshwater. While two of the three methods discussed in the Draft Permit Fact Sheet result in slightly higher copper benchmark values for freshwater than marine, the Monte Carlo method yielding the lowest freshwater benchmark (i.e., 14 ug/L), seems most appropriate after consideration of the studies showing adverse effects to salmon from low levels of copper in freshwater.

EPA supports the zinc benchmarks (i.e., 85 and 90 ug/L) in the Draft Permit given that the treatment studies have demonstrated that these levels are achievable and that these values are likely to be sufficient to attain the zinc water quality standards.

In addition to the benchmarks, EPA believes it is appropriate to also include technology-based *numeric effluent limits* for copper and zinc given the recent studies on treatment systems to remove these metals. EPA recommends copper numeric effluent limits of 50 ug/L (seasonal average) and 147 ug/L (daily maximum) and zinc numeric effluent limits of 85 ug/L (seasonal average) and 90 ug/L (daily maximum) apply to boatyards that trigger a level 3 response. As discussed in the Draft Permit Fact Sheet, there is a high degree of confidence that installed treatment systems at boatyards can achieve these levels. EPA notes that these technology-based numeric effluent limits would be in addition to, not supplant, the benchmarks. For copper, the benchmarks would continue to be the goal for water quality purposes and adaptive management to meet the lower copper benchmarks would continue to be a requirement of the permit.

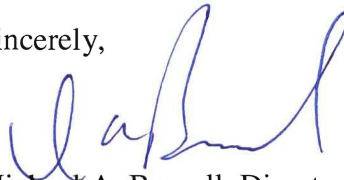
EPA has two comments on the monitoring requirements (S6). First, EPA recommends that additional sampling be required in the June through September period. Boatyards are active and stormwater events do occur during this period, especially in June and September. In 2008, Ecology proposed monthly sampling for boatyards. Given the importance of complete representative monitoring of boatyards, it's unclear why more sampling is not required. Second, in 2008, Ecology also proposed a number of sampling conditions to help ensure samples were taken to represent maximum concentrations. The Draft Permit does not include any of these

added conditions with no explanation in the Fact Sheet why these conditions are not warranted. EPA recommends the inclusion of some sampling conditions, such as the sample must be taken within 12 hours of the start of a discharge event that is preceded by at least a 24 hour dry period.

Lastly, EPA thinks it would be helpful to explain in more detail what constitutes a benchmark exceedance in S7. For example, from discussions with Ecology's Gary Bailey, EPA understands that a grab or composite sample during a single day that exceeds the maximum daily benchmark would count as one benchmark exceedance and if the seasonal average benchmark is exceeded that would count as one benchmark exceedance.

Thank you for your consideration of our comments. If you have any questions or concerns, please feel free to call me at (206) 553-4198 or John Palmer of my staff at (206) 553-6521.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Bussell", is positioned above the printed name.

Michael A. Bussell, Director
Office of Water and Watersheds

cc: Mr. Steve Landino, NMFS